No. 00-6374-CFX Title: Dale G. Becker, Petitioner
v.
Betty Montgomery, Attorney General of Ohio, et al.

Docketed: October 2, 2000 Court: United States Court of Appeals for the Sixth Circuit

Entry	Date	Proceedings and Orders
	Sep 25 2000	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due November 1, 2000)
	Oct 6 2000	Waiver of right of respondents Betty Montgomery, Atty. General of OH, et al. to respond filed.
	Oct 12 2000	DISTRIBUTED for Conference of October 27, 2000
	Oct 23 2000	Response requested.
	Nov 21 2000	Brief of respondents Betty Montgomery, Attorney General, et al. in opposition filed.
	Dec 7 2000	REDISTRIBUTED for Conference of January 5, 2001
	Jan 8 2001	Petition GRANTED. SET FOR ARGUMENT April 16, 2001. **********
	Jan 10 2001	REDISTRIBUTED for Conference of January 12, 2001
	Jan 16 2001	The order granting the petition for a writ of certiorari is amended to read as follows: The motion of petitioner for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari is granted limited to the following question: When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?
	Jan 16 2001	Stewart A. Baker, Esquire, of Washington, D.C., is invited to brief and argue this case, as amcius curiae, in support of the judgment below.
	Jan 16 2001	Motion of petitioner for appointment of counsel filed.
	Jan 16 2001	Motion DISTRIBUTED. January 19, 2001 (Page 13)
	Jan 22 2001	Motion for appointment of counsel GRANTED and it is ordered that Jeffrey S. Sutton, Esquire, of Columbus, Ohio, is appointed to serve as counsel for the petitioner in this case.
	Feb 21 2001	Record filed.
	Feb 22 2001	Brief of petitioner Dale G. Becker filed.
	Feb 22 2001	Joint appendix filed.
	Feb 22 2001	Brief of respondents Betty Montgomery, Attorney General, et al. in support of petition filed.
	Feb 23 2001	Record filed.
	Feb 28 2001	Motion of respondents for divided argument filed.
	Mar 9 2001	CIRCULATED.
	Mar 16 2001	Motion of respondents for divided argument DISTRIBUTED.
	Mar 19 2001	Motion of respondents for divided argument DENIED.
	Mar 26 2001	Brief of amicus curiae Stewart Baker in support of judgement below at the invitation of the Court filed.
	Mar 26 2001	LODGING consisting of twenty bound copies of documents in two volumes received from Stewart Baker and distributed.

2 pp

No. 00-6374-CFX

Entry	Date	Proceedings and Orders
	Apr 9 2001	Reply brief of petitioner Dale G. Becker filed.
	Apr 16 2001	ARGUED.

ORIGINAL

Supreme Court, U.S.
FILED
SEP 25 2000
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 00-6374

Dale G. Becker

Petitioner,

- against -

Betty Montgomery, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RECEIVED
SEP 25 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S

Respectfully Submitted,

Dale G. Becker

Dale G. Becker
No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

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QUESTION PRESENTED FOR REVIEW

There are conflicting opinions among the appellate courts and this courts' jurisdiction is needed to establish uniformity among the circuits. The dismissal of petitioner's "appeal on the basis that the notice of appeal was not signed" is in conflict with opinions of the 5th, 7th, 9th, and 11th circuits which generally state that a "timely but unsigned notice of appeal satifies the judisdictional requirements of Rule 4(a)."

The 6th Circuit has prejudiced and discrimnated against this Petitioner in violation of the 8th Amendment, when the 6th circuit led the opposing counsel, in another case, by the hand and permitted them to resubmit the unsigned conclusion page after they signed that page but dismissed petitioner's case for not signing the notice of appeal when the District Form # 6CA, did not provide any space for a signature. If the notice of appeal was not in compliance, then the question is why did the 6th circuit issue a briefing schedule and permit all parties to brief the case, and/or why did the 6th circuit not give petitioner the same opportunity to correct and resubmit as was given to opposing counsel?

P A R T I E S

Petitioner, Dale G. Becker, is a State prisoner confined at the Chillicothe Correctional Institute located in Chillicothe, Ohio, County of Ross.

DEFENDANTS:

Betty Montgonery, Ohio Attorney General, 140 East Town Street, Columbus, Ohio 43215-6001 and all Attorneys employed by the Ohio State Attorney General.

Mal Payne, Unit Manager of H-Dorm in 1997, P.O. Box 5500, Chillicothe, Ohio 45601.

Kay Carneine, institution Inspector at time of CCI, P.O. Box 5500, Chillicothe, Ohio 45601.

L.C. Coval, Assistant Chief Inspector, 1050 Freeway Drive North, Columbus, Ohio 43229.

Ernie Moore, Deputy Warden of Operations, P.O. Box 5500, Chillicothe, Ohio 45601.

Fred McAninch, Warden of the Chillicothe Correctional Institute in 1997, 1050 Freeway Drive North, Columbus, Ohio 43229.

Gary Moore, Warden of the Chillicothe Correctional Institute in 1998, 1050 Freeway Drive North, Columbus, Ohio 43229.

Michael Randall, Warden of the Chillicothe Correctional Institute in 1999, P.O. Box 5500, Chillicothe, Ohio 45601.

Bobbie McKeever, Sergeant of E-1 Unit in 1997, P.O. Box 5500, Chillicothe, Ohio 45601.

Danny Pfeifer, Unit Manager of E-1 Unit, P.O. Box 5500, Chillicothe, Ohio 45601.

Kenneth Eberts, Unit Manager Administrator, P.O. Box 5500, Chillicothe, Ohio 45601.

CITATIONS (Decisions Below)

July 28, 1999	Petitioner filed this action in the U.S. District Court, Southern District, Eastern Division, and was dismissed for 'failure to exhaust his prison administrative remedies.'
September 20, 1999	From that decision Petitioner appealed to the 6th circuit.
October 27, 1999	Petitioner received the Briefing Schedule, app 6 & 7.
May 12, 2000	Order stating that this court lacks jurisdiction for the notice of appeal wan not signed.
May 22, 2000	Correction Brief for Reconsideration filed.
July 14, 2000	Dismissing appeal on the basis that the notice of appeal was not signed.

From that order Petitioner is Petitioning this court for Writ of Certiorari.

J U R I S D I C T I O N

Jurisdiction is conferred upon this court by 28 U.S.C. §1254 to review by Writ of Certiorari a decision from the 6th circuit court of appeals.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The provisions of the First and Fourteenth Amendments to the United States Constitution as well as case law decided in the circuits are involved being equal protection and equal treatment of the laws.

STATEMENT OF THE CASE

The 6th circuit opinions, app 1 & 5, is in direct conflict with the 5th, 7th, 9th, and 11th circuits rulings, app 3 & 4. These circuits opinions are that there are no rules regarding signing the notice of appeal, and when timely filed but unsigned notice of appeal satisfies jurisdictional requirements.

The 6th circuit refused to reconsider, app 5, and permit Petitioner to submit a signed notice of appeal, even though, the 6th circuit did accept Petitioner's unsigned notice of appeal, app 2, ("A signature may be...typewritten..." Blacks Law, Giebelhaus v. Spindrift Yachts, 938 F.2d at 965 (9th Cir. 1991) "...because his typed name on the suspect pleadings constitutes a signature.") and did set up the Briefing Schedule, app 6 & 7, and all parties had opportunity to brief this case, but permitted opposing counsel, after notice from the 6th circuit, app 8, to correct an unsigned conclusion page.

Being there are numerous opinions, to have notice of appeal unsigned, except the 6th circuit, to meet jurisdictional requirements, a decision from this the United States Supreme Court is needed to establish uniformity in the circuits.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflict With Decisions of Other Circuit Courts

The opinion of the 6th corcuit, app 1, conflicts with opinions of four (4) other circuits; 5th, 7th, 9th, and 11th circuits when the 6th circuit dismissed Petitioner's case "because it [the notice of appeal] wan not signed, app 2.

McNeal v. Blackburn, 802 F.2d 830 at 832 (5th Cir. 1986), app 3;

> "...timely but unsigned notice of appeal satisfies the jurisdictional requirement of Rule 4(a)."

And also;

Robinson v. City of Chicago, 886 F.2d at 963, n.2 (7th Cir. 1989), app 3;

> "...an unsigned notice of appeal ... meets the jurisdictional requirements."

Petitioner's notice of appeal did meet the requirements in the opinions of;

Giebelhaus v. Spindrift Yachts, 938 F.2d at 965 (9th Cir. 1991) all 4;

> "...because his typed name on the suspect pleadings constitutes a signature."

And also;

Thiem v. Hertz Corp., 732 F.2d 1559 (11th Cir. 1984), app 4;

> "In our judgment, however, the notice with the typed names of counsel and appellant was sufficient to give this court jurisdiction.'

The 6th circuit decision to dismiss my appeal in in contrary to there own opinions;

Ashiegub v. Puriance, 76 F.Supp.2d at 828 (S.D Ohio 1998);

> "A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." See Hanes v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.E.2d 652 (1972): see also Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.E.2d 251 (1976).

Zolman v. I.R.S., 87 F.Supp.2d 763 (W.D. Mich. 1999);

> "Further, as plaintiff is proceeding pro se, the complaint must be given a liberal reading, and is not held to the standard applicable to complaints drafted by trained legal conusel."

And also a decison from this Court;

Torres v. Oakland Scavenger Co., 108 S.Ct. 2405 at 2408 (1988) app 4;

> 'mere technicalities" should not stand in the way of consideration of a case on its merit.

All these numerous opinions that state that a notice of appeal, unsigned by hand, does meet jurisdictional requirements, except the 6th circuit disagrees. This Court's decision is needed to establish uniformity in the circuits and put an end to the question to sigh or not to sigh the notice of appeal to meet the jurisdictional requirement.

B. Importance of the Question Presented.

Petitioner filed a Motion for Reconsideration to this question of hand signed notice of appeal but was denied by the 6th circuit, app 5. Even though the 6th circuit accepted Petitioner's unsigned bu hand notice of appeal, app 2, and did issue a Briefing Schedule, app 6 & 7, and all parties had opportunity to brief this case.

The 6th circuit deliberately mis-quoted Fed.R.App.P. Rules 4(a)(1) & 3(c) and Rule 11, Fed.R.Civ.P. to fit their ruling in Matingly v. Farmer State Bank, 153 F.3d at 337 (6th Cir. 1998);

> Rule 11(a) of the Federal Rules of Civil Procedure, which governs the filing of pleading and other documents in the district court, provides that "[e]very pleadings, written motion, and other paper shall be signed by" the attorney representing the party or the party himself if he is proceeding pro se. As a notice of appeal is an "other paper" filed with the district court, it is clear that Fed.R.App.P. 4(a)(1) requires that a notice of appeal must be signed in order for it to be considered properly filed. This reading of the relevant rules is acknowledged by Fed.R.App.P. 3(c), which notes that "[a] notice of appeal filed pro se is filed on behalf of the party signing the notice ...." (emphasis added).

No where in either Rule 4(a)(1) or 3(c) does it state "signing the notice" or (emphasis added). Complete copy of rule 4(a)(1) & 3(c) on page 9 APPENDIX. "But naming a party is a specified appellate requirement; a sighed notice is not." Robinson supra. Also in McNeil supra, "The Federal Rules of Appellate Procedure have no provision for signing pleadings, as is found in Rule 11, Fed.R.Civ.P. There is some doubt as to whether that Rule applies to notice of appeal at all."

If, the unsigned by hand notice of appeal was "defective" in the 6th circuit's opinion, app 1, the 6th circuit should of went by Rule 11, Fed.R.Civ.P.

> An unsigned paper shall be stricken unless omission of the signature is corrected promptly after called to the attention of the attorney or party.

That is exactly what the 6th circuit did in another case the Petitioner is litigating, when the 6th circuit permitted opposing counsel, after notice from the 6th circuit to correct an unsigned conclusion page, app 8.

The 6th circuit was prejudice and discriminated against pro se incarcerated petitioner in violation of the 1st and 14th Amendments to the United States Constitution and numerous case law, when opposing counsel was **led by the hand** to comply with Rule 11, Fed.R.Civ.P. but Petitioner's case was dismissed because

the 6th circuit did not follow Rule 11, Fed.R.Civ.P. and give Petitioner "a fair and meaningful consideration." Donold v. Cook County Sheriff Dep't, 95 F.3d at 555, (7th Cir. 1996); Also, S.F.C. v. Elliot, 953 F.2d 2560 (11th Cir. 1992);

> When interpreting pro-se papers court should use common sense to determine what relief party desires.

How many hurdles does a pro-se incarcerated litigant have to overcome when the Ohio Attorney General was led by the hand by the 6th circuit to get the advantage? All Petitioner is asking is to given the same consideration as trained attorneys. Even though, Petitioner, as pro se, should be "held to a less stringent standard as trained counsel." Ashieguh supra.

C O N C L U S I O N

I an aware that only a very small percent of cases are granted certiorari. If I did not believe that this case raises an important question the United States Supreme Court can only answer, I would not have wasted my time and yours.

Petitioner does believe that the conflicting opinions among the circuits does need to be address by this Court to establish uniformity among the circuits.

Petitioner respectfully request, for the facts, case law, and reasons stated asbove, that this Honorable Court would issue a Writ of Certiorari and return this case to the appellate court for a ruling on the merits of the case, that is all Petitioner request.

Respectfully Submitted,

Dale G. Becker, No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

VERIFICATION DECLARATION

In accordance with U.S.C. §1746, Unsworn Declaration, the Petitioner hereby declares under penalty of perjury, that these statements are true and correct to the best of his knowledge, belief and information.

Dale G. Becker, No. 249-474

CERTIFICATE OF SERVICE

I do certify that a true and correct copy of this within Petition for Writ of Certiorari has been sent to the Office of the Attorney General, 140 East Town Street, Columbus, Ohio 43215-6001, by regular U.S. Mail, postage prepaid, on this the 20 day of September, 2000.

Sept 20, 2000
Date Signed

Dale G. Becker, No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

RECEIVED
SEP 2 5 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

Supreme Court, U.S.
FILED
SEP 25 2000
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No._____

Dale G. Becker

Petitioner,

- against -

Betty Montgomery, et al.,

Respondents.

APPENDIX

ONE COMPLETE SET OF EXHIBITS AND CASES

RECEIVED
SEP 25 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Respectfully Submitted,

Dale G Becker

Dale G. Becker
No. 249-474
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

No. 99-4190

FILED
MAY 12 2000
LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DALE G. BECKER,

Plaintiff-Appellant,

v.

BETTY MONTGOMERY, et al.,

Defendants-Appellees.

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

Before: BATCHELDER, MOORE, and BEEZER*, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

A review of the documents before the court indicates that the judgment of the district court was entered August 30, 1999. A notice of appeal was filed from that decision but it was not signed.

This court lacks jurisdiction over this appeal. The notice of appeal is defective because it was not signed by the pro se appellant or by a qualified attorney. *See Mattingly v. Farmers State Bank*, 153 F.3d 336, 337-38 (6th Cir. 1998) (per curiam).

It is ordered that the appeal is dismissed.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

*The Honorable Robert R. Beezer, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

FILED
KENNETH J. MURPHY
CLERK

99 SEP 20 PM 1:25

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

Exhibit C

UNITED STATES DISTRICT COURT

FOR THE Southern DISTRICT OF Ohio

Dale G. Becker

Docket Number C2-99-825

Judge Sargus
(District Court Judge)

Betty Montgomery, et al.

NOTICE OF APPEAL

Notice is hereby given that Dale G. Becker appeals to the United States Court of Appeals for the Sixth Circuit from the (XXX) Judgment (___) Order (___) Other (specify) _____ entered in this action on August 27,1999
(Date)

Dale G. Becker
(Counsel for Appellant)

Address Box 5500

No. 249-474

Chillicothe, Ohio 45601-0990

Phone: _____

Date September 13,1999

6CA-3
8/70

BEST AVAILABLE COPY

App 2

*U.S. GPO: 1998-751-804/40005

McNeil v. Blackburn, 802 F.2d 830 at 832 (5th Cir. 1986)

We must decide, therefore, whether petitioner's timely but unsigned notice of appeal satisfies the jurisdictional requirement of Rule 4(a). We hold that it does. As our sister circuit has stated:

> The Federal Rules of Appellate Procedure have no provision for signing pleadings, as is found in Rule 11, Fed.R.Civ.P. There is some doubt as to whether that Rule applies to notice of appeal at all. In any event, it appears clear that the rules do not require a decision that this Court is without jurisdiction to hear this appeal.

Thiem v. Hertz Corp. 732 F.2d 1559,1563 (11th Cir. 1984)(Citing J. Moore & B. Ward, Moore's Federal Practice, ¶203.17, at 3-72 & n. 17 (2d ed.1983)). Hence, this court has jurisdiction to consider the issues raised in this appeal.

Robinson v. City of Chicago, 868 F.2d 959 at 963, n. 2 (7th Cir. 1989)

In any event, an unsigned notice of appeal, even if it does not meet the demands of Fed.R.Civ.P. 11, meets the jurisdictional requirements for appeal. See, e.g., McNeil v. Blackburn, 802 F. 2d 830, 832 (5th Cir. 1986) (per curium); Lewis, supra, 784 F.2d at 831; see also Thiem v. Hertz Corp., 732F.2d 1559, 1562 (11th Cir. 1984). Plaintiff points to Fed.R.App.P. 3(c), which provides that "the notice of appeal shall specify the party or parties taking the appeal." Failure to name a party is jurisdictional and requires dismissing the appeal. See Torres v. Oakland Scavenger Co., 487 U.S. 312, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988). But naming a party is a specified appellate requirement; a signed notice is not. Thus, while we emphasize that a notice of appeal must be signed, there is nothing in the Torres decision, or in our cases applying Torres, Such as Allen Archery, Inc. v. Precision Shooting Equipment,Inc., 857 F.2d 1176, 1177 (7th Cir. 1988)(per curium), which suggest that we should dismiss this appeal.

App 3

Ciebelhaus v. Spindrift Yachts, 938 F.2d 962 at 965 (9th Cir. 1991)

"...because his typed name on the suspect pleadings constitutes a signature."

Thiem v. Hertz Corp, 732F.2d 1559 (11th Cir. 1984)

In our judgment, however, the notice with the typed names of counsel and appellant was sufficient to give this Court jurisdiction.

The provision for content of the notice of appeal, and the lack of any rigidness in connection there with, is found in Federal Appellant Rule 3(c):

> The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

The Federal Rules of Appellate Procedure have no provision for signing pleadings, as is found in Rule 11, Fed.R.Civ.P. There is some doubt as to whether that Rule applies to notice of appeal as all."

Torres v. Oakland Scavenger Co., 108 S.Ct. 2405 at 2408 (1988)

We do not dispute the important principle for which Foman [v. Davis, 371 U.S. 178. 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)] stands---that the requirement of the rules of procedure should be liberally construed and "mere technicalities" should not stand in the way of consideration of a case on its merits. Ibid. Thus, if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires.

App 4

No. 99-4190

EXHIBIT A

FILED

JUL 14 2000

LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DALE G. BECKER,

Plaintiff-Appellant,

v.

BETTY MONTGOMERY, et al.,

Defendants-Appellees.

ORDER

Before: BATCHELDER, MOORE, and BEEZER*, Circuit Judges.

Plaintiff-appellant has filed a motion for reconsideration of this court's order of May 12, 2000 dismissing the appeal on the basis that the notice of appeal was not signed.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The motion for reconsideration is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

*The Honorable Robert R. Beezer, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

App 5

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

CAROL FIELD
(513) 564-7024

Filed: October 27, 1999

Dale G. Becker
Chillicothe Correctional Institute
#249-474
P.O. Box 5500
Chillicothe, OH 45601

Betty Montgomery
Office of the Attorney General
of Ohio
30 E. Broad Street
17th Floor State Office Tower
Columbus, OH 43215-3428

RE: 99-4190
Becker vs. Montgomery
District Court No. 99-00825

We have today docketed the above-styled case as number **99-4190** in this Court. This case number must appear on all documents related to this case which are submitted to the Court.

The briefing schedule for this appeal is listed below. The briefs and joint appendix will be deemed filed on the day of mailing if sent by ordinary first-class mail or third party commercial carrier.

The court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case. Enclosed you will find a form to be used to present your case in your own words as clearly as you can. Your failure to file a brief or joint appendix (as applicable) by the established due dates may result in the dismissal of your case.

BRIEFING SCHEDULE

Appellant's Brief:	Signed original & 6 Copies (See attached Pro Se Brief Form) Maximum 30 Pages **Due 11/24/99**
Appellee's Brief:	Signed original & 6 Copies Red Cover Maximum Length: See Rule 32 for page or type - volume limitations **Due 12/22/99**
Appellant's Reply Brief: (Optional)	Signed original & 6 Copies Maximum 15 Pages **Due 1/5/00**
Joint Appendix or: Photocopies of Record	5 Copies of Joint Appendix or 4 Copies of Record White Cover **Due 1/12/00**

In prisoner cases filed pro se and in forma pauperis, the state attorney general or the United States Attorney, as the case may be, is required to file an adequate appendix. The appendix shall include copies of the opinion and order from which the appeal is taken.

Two copies of your brief and one copy of the joint appendix (as applicable) are to be served on opposing counsel, pursuant to Fed. R. App. P. 25(d). A certificate of service must accompany the submission of any document to this court.

If you have any questions about these instructions, you should contact the case manager at the number listed above.

(Ms.) Carol Field
Case Manager

App 6

App 7

LEONARD GREEN
CLERK

FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

VALERIE FIELDS
(513) 564-7026

Filed: July 18, 2000

Exhibit B

Ms. Dawn M. Tarka
Office of the Attorney General
Corrections Litigation Section
140 E. Town Street
14th Floor
Columbus, OH 43215-6001

RE: 00-3631
Becker vs. Ghee
District Court No. 99-00966

Dear Counsel:

This is to advise you that on July 17, 2000 we received the briefs you submitted on behalf of your client. Upon review we we have determined that it does not comply with the relevant Federal Rules of Appellate Procedure or the Sixth Circuit Rules, in the following manner:

No Form of Appearance of Counsel was filed. The form is enclosed.
The briefs need attorney's signature on conclusion page.
Please do not call document "final" because the Court considers this a regular appellee brief.

Accordingly, we ask that you submit an original and six (6) copies of the signed conclusion page and appearance of counsel form to this office not later than 7/24/00 . No extensions will be granted. Upon receipt, the corrected copies will be substituted for the orginal filing, which will then be discarded.

Thank you for your cooperation with this request. Any inquiries you may have can be addressed to the undersigned.

Leonard Green, Clerk

(Ms.) Valerie Fields
Deputy Clerk

cc:
Dale G. Becker

App 8

Federal Rules of Appellate Procedure

R U L E 4(a)(1);

In a civil case in which an appeal is permitted by law as of right form a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

R U L E 3(c);

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

App 9

RESPONSE REQUESTED

ORIGINAL

Supreme Court, U.S.
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No. 00-6374

IN THE
SUPREME COURT OF THE UNITED STATES

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

BETTY D. MONTGOMERY
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DAVID M. GORMLEY*
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SUPREME COURT, U.S.

QUESTION PRESENTED

Where a party files a timely – but unsigned – notice of appeal in the district court, and where that party's intent to appeal is clear from the notice and from his later actions in the court of appeals, should the court of appeals retain jurisdiction over the case and reach the merits of the appeal, or at least give the appellant an opportunity to correct the unsigned notice before dismissing the case for lack of jurisdiction?

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INTRODUCTION

Petitioner Becker's civil rights action under 42 U.S.C. 1983 – alleging that he was intentionally exposed to second-hand smoke while incarcerated at a state prison in Ohio – was dismissed by the district court last year, both because Becker had failed to exhaust his prison administrative remedies, and because the complaint failed to state a claim for relief under Fed. R. Civ. P. 12(b)(6). When Becker filed his timely notice of appeal in the district court, he did not sign it. Nearly eight months later – after the case had been fully briefed on the merits of Becker's appeal in the court of appeals – the appellate court dismissed the case because Becker had not signed the notice of appeal.

We agree with Becker that he has indeed identified an issue on which the courts of appeals are divided. And we acknowledge that the approach followed by the Sixth Circuit – treating as a jurisdictional defect any failure by a *pro se* party to sign the notice of appeal – is not compelled by the Federal Rules of Appellate Procedure, at least where, as here, the unsigned notice of appeal was not misleading, and where appellant Becker's intent was clear. We therefore urge the Court to summarily reverse the judgment below, and to remand the case to the court of appeals for further proceedings on the merits of Becker's claims.

A. Court Rules And Decisions Indicate That Notices Of Appeal Should Be Signed, Though Not All Courts Treat The Lack Of A Signature As A Jurisdictional Defect.

"The circuits are divided as to whether the Civil and Appellate Rules require the signing of a notice of appeal." 20 Moore's Federal Practice, § 303.21[3][b][i] (Matthew Bender 3d ed. 2000). Some courts, like the court of appeals below, have insisted that those notices be signed by each *pro se* appellant, and have treated the absence of a signature as a jurisdictional defect. See *Ruiz Rivera v. Riley*, 209 F.3d 24, 27 (1st Cir. 2000) (where notice of appeal was signed by only one of several *pro se* individuals, the notice was valid only as to the individual who had signed the notice); *Covington v. Allsbrook*, 636 F.2d 63, 64 (4th Cir. 1980) (reaching the same result, and explaining that the "only means of determining which litigants are interested in pursuing an appeal is by requiring each *pro se* party to personally sign the notice of appeal"), *cert. denied*, 451 U.S. 914 (1981); *Mikeska v. Collins*, 928 F.2d 126 (5th Cir. 1991) (same result); *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998) ("a notice of appeal must be signed in order for it to be considered properly filed"); *Scarrella v. Midwest Federal Sav. and Loan*, 536 F.2d 1207, 1209 (8th Cir. 1976) (where notice of appeal was signed by only one of several *pro se* individuals, the notice was valid only as to the individual who had signed the notice), *cert. denied*, 429 U.S. 885 (1976); *United States v. Johnson*, 43 F.3d 1308, 1310 n.1 (9th Cir. 1995) ("*pro se* appellants must personally sign the notice of appeal").

Other courts have likewise insisted that notices of appeal be signed, but have opted not to treat the lack of a signature as a jurisdictional defect. See, e.g., *McNeil v. Blackburn*, 802 F.2d 830, 832 (5th Cir. 1986) (where the district court returned the appellant's unsigned notice of appeal to him, and a signed version was not received back until after the time for an appeal had run, the court of appeals accepted the timely, but unsigned, notice of appeal); *Robinson v. City of Chicago*, 868 F.2d 959, 962 n.2 (7th Cir. 1989) ("emphasiz[ing] that a notice of appeal must be signed," but declining to treat the lack of a signature as a jurisdictional defect), *cert. denied*, 493 U.S. 1035 (1990); *Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 831 (7th Cir. 1986) (noting that a *pro se* appellant "is required to sign the notice of appeal," but giving her or an attorney on her behalf an additional 30 days to sign the notice of appeal); *Price v. United States Navy*, 39 F.3d 1011, 1014-15 (9th Cir. 1994) (where the appellant's husband signed the notice of appeal on her behalf, the court of appeals opted not to dismiss the appeal, given that

the appellee did not claim any confusion, and the error was "immediately corrected"); *Thiem v. Hertz Corp.*, 732 F.2d 1559, 1562 (11th Cir. 1984) (explaining that the "district court clerk would have been better advised to retain the unsigned notice and call for a signed notice to be substituted," but holding that the appeal need not be dismissed for lack of jurisdiction).

The federal circuit courts' near-unanimity on the question of a signature requirement for notices of appeal finds support in the current versions of Fed. R. App. P. 3 and Fed. R. Civ. P. 11, though the first time that any reference to a signature requirement appeared in Rule 3 itself was December 1, 1993, when this language was added to the rule: "A notice of appeal filed *pro se* is filed on behalf of the party signing the notice . . . ." Fed.R.App.P. 3(c) (1993). Five years later, the rule's current language took effect: "A *pro se* notice of appeal is considered filed on behalf of the signer . . . ." Fed. R. App. P. 3(c)(2) (1998).

That language suggests that at least since 1993, a signature requirement has applied to notices of appeal. (And that language in turn suggests that any earlier cases dispensing with a signature requirement have been abrogated by the 1993 and 1998 revisions to the rule.) Rule 11 likewise points to a signature requirement. According to the current version of the rule:

> Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Fed. R. Civ. P. 11 (1993). Similar language has been part of Rule 11 since it was first amended in 1983. And even if Rule 11 applies only to proceedings in the district courts rather than the federal appellate courts, the rule still appears to require a signature on notices of appeal, since those notices must of course be filed with the clerk of the district court, who then forwards them on to the court of appeals. Fed. R. App. P. 3(a)(1).

The sample notice of appeal included in the "Appendix of Forms" in printed versions of the Federal Rules of Appellate Procedure shows a signature line – "(s)_____" – at the bottom of the form, again suggesting that those notices must be signed. See attached App. 1 from Fed. R. App. P. Appendix of Forms, Form 1, 28 U.S.C.A. (2000). That sample form was last modified in 1993. The sample notice of appeal available on the Sixth Circuit's web site contains the same line for a signature. See attached App. 2 from http://pacer.ca6.uscourts.gov/notices/main.php .

B. Where An Identified Party Files A Timely, Though Unsigned, Notice Of Appeal That Clearly Expresses His Intent To Appeal, The Court Of Appeals Should Not Dismiss The Appeal Without First Giving The Appellant An Opportunity To Correct The Notice.

Even if a signature is required on the notice of appeal, however, the more critical question here is whether the absence of a signature allows (or perhaps even requires) a court of appeals to dismiss the appeal for lack of jurisdiction. Certainly the Sixth Circuit treats the lack of a signature on the notice of appeal as a jurisdictional defect, explaining that "[a]n unsigned notice of appeal could be nothing more than opportunistic behavior by the purported appellant in order to gain more time to consider whether or not the party really wants to appeal." *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998).

While we appreciate the appellate court's concern in *Mattingly*, and are obviously not disappointed by the application of that case's a-notice-of-appeal-must-be-signed holding to this case, we think the better approach – an approach consistent with the letter and spirit of the federal rules – is the one suggested in the *McNeil*, *Lewis*, *Price* and *Thiem* decisions cited above, from the Fifth, Seventh, Ninth and Eleventh Circuits respectively, all of which declined to dismiss appeals initiated by unsigned notices of appeal, and several of which indicated that additional time should be given to *pro se* appellants to file properly signed notices.

That is particularly true here, where Becker was the only plaintiff in the district court. We cannot honestly claim any uncertainly about petitioner Becker's intention to pursue an appeal once he filed his timely, though unsigned, notice of appeal in the district court. We never objected to the lack of a signature on his notice of appeal, and fully expected the court of appeals to address his appellate arguments on the merits.

The more lenient approach followed by several circuits finds support in the federal rules themselves:

> An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.
>
> ***
>
> An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

Fed. R. App. P. 3(a)(2) & (c)(4).

And the language that we quoted above from Rule 11 suggests that parties should be given an opportunity to add a signature to unsigned documents:

> An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Fed. R. Civ. P. 11(a).

Prior decisions of this Court likewise point to some flexibility in the federal rules when a party's intentions – particularly a *pro se* party's intentions – are clear. See *Smith v. Barry*, 502 U.S. 244, 245 (1992) (holding that "a document intended to serve as an appellate brief may qualify as the notice of appeal required by Rule 3"); *id.* at 248-49 ("If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal."); *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269 (1991) (holding that a district court's non-final bench ruling was a "decision" from which a notice of

appeal could be filed, even if the court had not yet entered final judgment); *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316-7 (1988) (explaining that "if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires," but holding that the court of appeals did not have jurisdiction over one particular appellant's appeal where his name had been inadvertently omitted from the notice of appeal filed by his 15 co-appellants); *Foman v. Davis*, 371 U.S. 178, 181 (1962) (holding that because the appellant's "intention . . . was manifest," and because the "defect in the second notice of appeal did not mislead or prejudice the respondent," the court of appeals had improperly dismissed an appeal where the notice of appeal failed to specify all of the orders that the appellant intended to challenge in the appeal).

Here, we think the court of appeals should have directed petitioner Becker to submit a signed notice of appeal if the court – or we, as appellees – had any doubts about his intention to appeal. Even had we had any such doubts, "any doubts as to . . . [his] intent to appeal . . . are resolved by . . . [his] opening brief[]." *New York Life Ins. Co. v. Deshotel*, 142 F.3d 873, 884 (5th Cir. 1998) (holding that a "mistake in designating orders to be appealed does not bar review if the intent to appeal a particular judgment can be fairly inferred and if the appellee is not prejudiced or misled by the mistake"). The court of appeals in this case docketed Becker's appeal on October 1, 1999, and directed him to file an appellant's brief by November 24, 1999. Becker in fact filed such a brief – which he signed both on the cover and on the last page – on November 8, 1999, and no one could then doubt his intention to appeal, or question his willingness to comply with court rules and deadlines.

The May 12, 2000 order from the court of appeals dismissing Becker's appeal because the notice that he filed more than seven months earlier had not been signed seems unnecessarily harsh to us, particularly if the "purpose of requiring [in Rule 11a] unrepresented parties to sign their pleadings . . . was to make certain that those named as parties in an action in which there was no lawyer actually had assented to the filing of the action on their behalf." *Gonzales v. Wyatt*, 157 F.3d 1016, 1021 (5th Cir. 1998) (quoting 5A Wright & Miller, Federal Practice and Procedure: Civil 2d § 1334 at 54-55). There is no doubt on that score in this case, and "it would . . . be a harking back to the formalistic rigorism of an earlier and outmoded time . . . to hold that the extremely simple procedure required by the rules is itself a kind of Mumbo Jumbo, and that the failure to comply formalistically with them defeats substantial rights." *Alley v. Dodge Hotel*, 501 F.2d 880, 884 (D.C. Cir. 1974) (quoting *Crump v. Hill*, 104 F.2d 36, 38 (5th Cir. 1939)).

We are not afraid of a ruling on the merits of Becker's claims, and are confident that the district court's judgment dismissing those claims will be affirmed on appeal if the Sixth Circuit addresses them. (One basis on which the district court dismissed Becker's claims – his failure to exhaust administrative remedies available through his prison grievance system before he filed this lawsuit – is at issue in *Booth v. Churner*, No. 99-1964 (petition for cert. granted on 10/30/00), but in any event, the district court properly dismissed Becker's complaint under Fed. R. Civ. P. 12(b)(6).)

Because this Court has not addressed the precise issue in this case, and because the circuit courts have issued conflicting rulings on the question in the petition, the Court of course could grant the petition and set the case for full briefing and argument. We are certainly willing to defend the judgment below in a brief on the merits if the Court so directs. But given

that the federal rules are to "be construed and administered to secure the just, speedy, and inexpensive determination of every action," Fed. R. Civ. P. 1, and given that the question is a straightforward one, a brief opinion from the Court summarily reversing the judgment below seems warranted here.

If an unsigned notice of appeal creates uncertainty for a federal circuit court about the purported appellant or appellants' intent to appeal, then the court of appeals should direct the party or parties who filed the notice to sign or clarify that notice. But where, as here, the court of appeals (and we, as appellees) never questioned the sole appellant's intent to appeal, where that *pro se* appellant filed both the unsigned notice of appeal and later his signed appellate brief well within the time limits set by court rules and orders, and where the court of appeals never gave the appellant an opportunity to correct his notice of appeal as Fed. R. Civ. P. 11(a) seems to contemplate, nothing in the Federal Rules of Appellate Procedure appears to compel the dismissal ordered by the court below.

CONCLUSION

For the foregoing reasons, the petition should be granted, the judgment below summarily reversed, and the case remanded for further proceedings in the court of appeals.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

DAVID M. GORMLEY*
Associate Solicitor
**Counsel of Record*

Counsel for Respondents

November 2000

Form 1 RULES OF APPELLATE PROCEDURE

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United States District Court for the _____
District of _____
File Number _____

A.B., Plaintiff	)	
	)	
v.	)	*Notice of Appeal*
	)	
C.D., Defendant	)	

Notice is hereby given that [___(here name all parties taking the appeal)___, (plaintiffs) (defendants) in the above named case,[1]] hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the _____ day of _____, 19___.

(s) _____
Attorney for [_____]
[Address:_____]

(As amended Apr. 22, 1993, eff. Dec. 1, 1993.)

[1] See Rule 3(c) for permissible ways of identifying appellants.

United States District Court for the _____
District of _____

_____
_____
_____

Plaintiff,

vs. **CASE NO._____**

_____
_____
_____

Defendant.

NOTICE OF APPEAL

Notice is hereby given that _____, hereby appeal
(here name all parties taking the appeal)

to the United States Court of Appeals for the Sixth Circuit from _____
(the final judgment) (from an

_____ entered in this action on the _____ day of
order (describing it))

_____, _____.

(s)_____

Address:_____

_____

_____

Attorney for _____

cc: Opposing Counsel ___
Court of Appeals ___

6CA-3
1/99

No. 00-6374

IN THE
SUPREME COURT OF THE UNITED STATES

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the enclosed Brief In Response To The Petition For Writ Of Certiorari was served upon Dale G. Becker, #A249-474-00, Chillicothe Correctional Institution, P.O. Box 5500, Chillicothe, Ohio 45601, by first class U.S. mail, postage prepaid, on the 21st day of November, 2000. All persons required to be served have been served.

David M. Gormley
Associate Solicitor
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Columbus, Ohio 43215
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SUPREME COURT, U.S.

Attorney General
Betty D. Montgomery

November 21, 2000

William K. Suter, Clerk
The Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: No. 00-6374:
Dale G. Becker v. Betty Montgomery

Dear Mr. Suter:

Enclosed please find the original and 10 copies of a Brief In Response To The Petition For Writ of Certiorari in No. 00-6374.

The certificate of service is also enclosed.

Respectfully yours,

David M. Gormley
Associate Solicitor
Office of the Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980

cc: Dale G. Becker, Petitioner

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(4)

No. 00-6374

IN THE
Supreme Court of the United States

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY, ATTORNEY GENERAL OF OHIO, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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Petition for Certiorari Filed September 25, 2000
Certiorari Granted January 8, 2001

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RELEVANT DOCKET ENTRIES

I. BEFORE THE U.S. DISTRICT COURT FOR THE SOUTHERN OF OHIO (COLUMBUS) CASE NO. 99-CV-825

1.	8/27/99	Application to proceed *in forma pauperis* by plaintiff Dale G. Becker [Entry date 8/30/99]
2.	8/27/99	Complaint [Entry date 8/30/99]
3.	8/27/99	Order dismissing case [Entry date 8/30/99]
4.	8/27/99	Judgment pursuant to the 8/27/99 order by Judge Edmund A. Sargus, Jr. [Entry date 8/30/99]
5.	9/20/99	Notice of Appeal by plaintiff Dale G. Becker from District Court decision of 8/27/99 [Entry date 9/21/99]
6.	10/13/99	Order: Plaintiff must complete the required *in forma pauperis* forms within 30 days or appeal may be dismissed [Entry date 10/13/99]
7.	10/18/99	Motion by plaintiff Dale G. Becker to proceed *in forma pauperis* on appeal [Entry date 10/18/99]

8. 10/26/99 Order granting motion to proceed *in forma pauperis* on appeal [Entry date 10/26/99]

II. BEFORE THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT CASE NO. 99-4190

1. 10/1/99 Prisoner case docketed; notice filed by appellant Dale G. Becker

2. 10/27/99 Copy of 10/26/99 District Court Order filed granting *in forma pauperis*

3. 10/27/99 Briefing letter sent setting *pro se* briefing schedule

4. 11/3/99 Appellee's letter filed notifying they will not be filing a brief

5. 11/8/99 Brief filed by *pro se* appellant Dale G. Becker

6. 1/13/00 Appellant's motion filed to consolidate this appeal with 99-3544

7. 1/18/00 Ruling denying appellant's motion for consolidation of this appeal with 99-3544

8. 1/31/00 Appellant's motion filed to reconsider ruling dated 1/18/00

9. 5/12/00 Order filed to dismiss case for lack of jurisdiction

10. 5/22/00 Appellant's motion filed to reconsider order dated 5/12/00

11. 7/14/00 Order filed denying motion to reconsider filed by Dale G. Becker

12. 7/25/00 Mandate issued

13. 8/31/00 Letter sent to Appellant Dale G. Becker returning unfiled petition for rehearing enbanc

14. 10/6/00 U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Dale G. Becker

15. 1/12/01 U.S. Supreme Court letter filed; leave to proceed *in forma pauperis* and the petition for writ of certiorari filed by Dale G. Becker are granted

III. BEFORE THE SUPREME COURT OF THE UNITED STATES CASE NO. 00-6374

1. 9/25/00 Petition for Certiorari filed

2. 1/8/01 Petition for Certiorari granted

3. 1/16/01 Order granting Petition for Certiorari amended

[Filed: Aug. 27, 1999]

IN THE UNITED STATED DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Dale G. Becker,	:	
Plaintiff	:	
v.	:	Case No. C2-99 825
Betty Montgomery, et al.,	:	Judge Sargus
Defendants	:	Magistrate Judge Abel

INITIAL SCREENING ORDER

Plaintiff Dale G. Becker, an inmate at Chillicothe Correctional Institution, brings this prisoner civil rights action under 42 U.S.C. §1983. This matter is before the Court for an initial screening of the complaint pursuant to 28 U.S.C. §1915A(a) and (b)[1] and 42 U.S.C. §1997e(c) to identify

---

[1] The full text of §1915A reads:

> (a) Screening.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) Grounds for Dismissal.—On review the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.
>
> (c) Definition.—As used in this section, the term "prisoner" (continued...)

cognizable claims, and to dismiss the complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. This Court finds that the complaint fails to state a claim upon which relief may be granted and therefore dismisses the complaint.

The complaint generally makes the claim that plaintiff Dale G. Becker has been exposed to second-hand cigarette smoke while incarcerated at the Chillicothe Correctional Institution. The complaint fails to plead the date(s) plaintiff was exposed to second-hand cigarette smoke. It also fails to allege with particularity the actionable conduct of each named defendant.

A complaint may be dismissed as frivolous only when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke*, 490 U.S. at 328-29; *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when, for example, a plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton*, 504 U.S. at 332; *Lawler*, 898 F.2d at 1199. The complaint may not be dismissed as factually frivolous simply because the court finds the plaintiff's claims unlikely or improbable. *Denton*, 504 U.S. at 32.

When considering whether a complaint fails to state a claim under Rule 12(b)(6), Federal Rules of Civil Procedure, a court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded material allegations

---

[1] (...continued)

> means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or terms and conditions of parole, probation, pretrial release, or diversionary program.

in the complaint as true. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Roth Steel Products v. Sharon Steel Corp.*, 705 F.2d 134, 155 (6th Cir. 1983). Rule 8(a), Federal Rules of Civil Procedure provides for notice pleading. *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A civil "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. at 45-46; *Lawler v. Marshall*, 898 F.2d 1196, 1199 (6th Cir. 1990). Moreover, pro se prisoner complaints must be liberally construed. *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980).

In order to state a claim under 42 U.S.C. §1983, plaintiff must allege that the persons engaging in the conduct complained of were acting under color of state law and that this conduct deprived plaintiff of some right secured by the Constitution or laws of the United States. *Graham v. National Collegiate Athletic Ass'n.*, 804 F.2d 953, 957 (6th Cir. 1986) (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1983), *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 517 (1984)).

The complaint generally alleges that defendants have caused plaintiff Dale G. Becker to be exposed to second-hand cigarette smoke during his incarceration at the Chillicothe Correctional Institution. The complaint does not allege the date(s) on which Mr. Becker was exposed to second-hand cigarette smoke. It also fails to allege with any particularity the conduct of each individual defendant that, if proved at trial, would demonstrate that the defendant knowingly acted to intentionally expose Mr. Becker to second-hand smoke.

The complaint further fails to demonstrate that Mr. Becker has exhausted his prison administrative remedies with respect to the constitutional claims he seeks to bring against each individual defendant. Section 1997e(a) provides that "no action shall be brought with respect to prison conditions under

§1983 . . . by a prisoner confined in any . . . prison . . . until such administrative remedies as are available are exhausted." Ohio inmates have grievance procedures available under Ohio Admin. Code §5120-9-31. A complaint may not be filed in federal court until the prisoner has filed a grievance under Ohio Admin. Code §5120-9-31, the grievance has been acted on, and the prisoner has exhausted all of his administrative appellate rights with respect to the grievance. Further, prisoners must "allege and show" that they have exhausted all administrative remedies. *Brown v. Tombs*, 139 F.3d 1102, 1104 (6th Cir. 1998). A prisoner "should attach to a §1983 complaint the administrative decision, if it is available, showing the administrative disposition of his complaint." *Id.* Plaintiff has failed to do so.

Plaintiff has attached as exhibits several grievance letters he has written to the Inspector at the Chillicothe Correctional Institution regarding whether he was on a list for a non-smoking dorm. However, all but one of these grievance letters was sent to the Inspector more than two years before Mr. Becker mailed his complaint to the Court.[2] The only grievance letter within the two-year period was sent by Mr. Becker on August 20, 1997, to Ken Eberts. It stated that he was on the list for a non-smoking dorm (E1). He wanted to know what the criteria were for getting into the non-smoking dorm. The response from Mr. Eberts, whose title was Unit Management Administrator, was that he agreed that the prison should put together a set of rules for the non-smoking dorm. There is no indication that Mr. Becker appealed from this disposition of his grievance.

---

[2] The complaint was received by the Court August 23, 1999. Mr. Becker's application to proceed *in forma pauperis* was executed by him August 12, 1999. For purposes of this decision, the Court will assume that Mr. Becker placed the complaint in the mail to the Court on or about August 12, 1999.

Since Mr. Becker has failed to plead and demonstrate that he has exhausted his prison administrative remedies with respect to his complaints against each individual defendant that they have knowingly and intentionally acted to expose him to second-hand cigarette smoke, his complaint cannot be filed in district court. 42 U.S.C. §1997e(a).

Even if plaintiff had exhausted his prison administrative remedies, the complaint fails to state a claim for relief against any defendant named. To establish an Eighth Amendment claim against a prison official, plaintiff must plead and prove that he has a serious medical need for a smoke-free environment or that he was exposed to levels of environmental tobacco smoke that created an unreasonable risk of harm to his future health. He must further show that each defendant actually knew that his exposure to environmental tobacco smoke created a substantial risk of harm and that each defendant deliberately disregarded that risk by failing to take reasonable measures to abate it. *Montague v. Campell*, 1998 WL 246345 *1 (6th Cir. May 6, 1998). Here there are no such allegations with respect to any defendant named in the complaint.

For the reasons set out above, the Court HOLDS that this case must be DISMISSED because plaintiff Becker has failed to exhaust his prison administrative remedies with respect to the claims he seeks to bring against each named defendant and because the complaint fails to state a claim for relief against any named defendant. The Clerk of Court is DIRECTED to enter JUDGMENT for defendants.

It is ORDERED that the United States Marshal serve upon each defendant named in part III, B and C of the form civil rights complaint a summons, a copy of the complaint, and a copy of this Order.

The Clerk of Court is DIRECTED to mail a copy of this Order to the Attorney General of Ohio, Corrections Litigation

Section, 140 E. Town St., 9th Floor, Columbus, Ohio 43215-6001.

/s/ Edmund A. Sargus, Jr.
United States District Judge

[Filed: Aug. 27, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

JUDGMENT IN A CIVIL CASE

Dale G. Becker

vs. Case Number C2-99-825

Betty Montgomery, et al., Judge Sargus
Magistrate Judge Abel

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[ ] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

[X] Decision by Court. This action was decided by the Court without a trial or hearing.

IT IS ORDERED AND ADJUDGED This case must be DISMISSED because plaintiff Becker has failed to exhaust his prison administrative remedies with respect to the claims he seeks to bring against each named defendant

and because the complaint fails to state a claim for relief against any named defendant.

Date: August 27, 1999 Kenneth J. Murphy, Clerk

/s/ Sherry Hatfield
By Sherry Hatfield / Deputy Clerk

[Filed: Sep. 20, 1999]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Dale G. Becker

Docket Number 02-99-825

Judge Sargus
(District Court Judge)

Betty Montgomery, et al.

NOTICE OF APPEAL

Notice is hereby given that Dale G. Becker appeals to the United States Court of Appeals for the Sixth Circuit from the (XXX) Judgment (___) Order (___) Other (specify) _____ _____ entered in this action on August 27, 1999.
(Date)

Dale G. Becker
(Counsel for Appellant)
Address: Box 5500
No. 249-474
Chillicothe, Ohio 45601-0990

Phone: _____

Date: September 13, 1999

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
Clerk

CAROL FIELD
(513) 564-7024

Filed: October 27, 1999

Dale G. Becker
Chillicothe Correctional Institute
#249-474
P.O. Box 5500
Chillicothe, OH 45601

Betty Montgomery
Office of the Attorney General of Ohio
30 E. Broad Street
17th Floor State Office Tower
Columbus, OH 43215-3428

RE: 99-4190
Becker vs. Montgomery
District Court No. 99-00825

We have today docketed the above-styled case as number 99-4190 in this Court. This case number must appear on all documents related to this case which are submitted to the Court.

The briefing schedule for this appeal is listed below. The briefs and joint appendix will be deemed filed on the day of mailing if sent by ordinary first-class mail or third party commercial carrier.

The court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case. Enclosed you will find a form to be used to present your case in your own words as clearly as you can. Your failure to file a brief or joint appendix (as applicable) by the established due dates may result in the dismissal of your case.

BRIEFING SCHEDULE

Appellant's Brief:	Signed original & 6 Copies (See attached Pro Se Brief Form) Maximum 30 Pages Due 11/24/99
Appellee's Brief:	Signed original & 6 Copies Red Cover Maximum Length: See Rule 32 for page or type - volume limitations Due 12/22/99
Appellant's Reply Brief: (Optional)	Signed original & 6 Copies Maximum 15 pages Due 1/5/00
Joint Appendix or: Photocopies of Record	5 Copies of Joint Appendix or 4 Copies of Record White Cover Due 1/12/00

In prisoner cased filed pro se and in forma pauperis, the state attorney general or the United States Attorney, as the case may be, is required to file an adequate appendix. The appendix shall include copies of the opinion and order from which the appeal is taken.

Two copies of your brief and one copy of the joint appendix (as applicable) are to be served on opposing counsel,

pursuant to Fed. R. App. P. 25(d). A certificate of service must accompany the submission of any document to this court.

If you have any questions about these instructions, you should contact the case manager at the number listed above.

(Ms.) Carol Field
Case Manager

[Filed: May 12, 2000]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DALE G. BECKER,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
Betty Montgomery, et al.,	)	
Defendants-Appellees.	)	

Before: BATCHELDER, MOORE, and BEEZER*, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

A review of the documents before the court indicates that the judgment of the district court was entered August 30, 1999. A notice of appeal was filed from that decision but it was not signed.

This court lacks jurisdiction over this appeal. The notice of appeal is defective because it was not signed by the pro se

* The Honorable Robert R. Beezer, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

appellant or by a qualified attorney. *See Mattingly v. Farmers State Bank*, 153 F.3d 336, 337-38 (6th Cir. 1998) (per curiam).

It is ordered that the appeal is dismissed.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green/[illegible]
Clerk

* The Honorable Robert R. Beezer, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

[Filed: July 14, 2000]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DALE G. BECKER,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
Betty Montgomery, et al.,	)	
Defendants-Appellees.	)	
	)	

Before: BATCHELDER, MOORE, and BEEZER*, Circuit Judges.

Plaintiff-appellant has filed a motion for reconsideration of this court's order of May 12, 2000 dismissing the appeal on the basis that the notice of appeal was not signed.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The motion for reconsideration is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green/[illegible]
Clerk

**IN THE SUPREME COURT
OF THE UNITED STATES**

[Caption Omitted in Printing]

Order Granting Petition for a Writ of Certiorari entered on January 8, 2001.

[Entered: Jan. 16, 2001]

IN THE SUPREME COURT OF THE UNITED STATES

[Caption Omitted in Printing]

The Order Granting the Petition for a Writ of Certiorari is amended to read as follows: The motion of petitioner for leave to proceed *in forma pauperis* is granted. The Petition for a Writ of Certiorari is granted limited to the following question: When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?

FEB 26 2001

(5)

Supreme Court, U.S.
FILED
FEB 26 2001
CLERK

No. 00-6374

IN THE
Supreme Court of the United States

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY, ATTORNEY GENERAL OF OHIO, *et al.*,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF FOR PETITIONER

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Counsel for Petitioner

QUESTION PRESENTED

When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?

PARTIES TO THE PROCEEDINGS

Petitioner is Dale G. Becker. Respondents are the Attorney General of Ohio—Betty Montgomery; various Ohio prison inspectors, prison wardens and prison administrators—Kay Carneine, L.C. Coval, Kenneth Ebetts, Fred McAninch, Bobbie McKeever, Gary Mohr, Ernie Moore, Mal Payne, Danny Pfeifer, Michael Randall; and Ohio's former Governor—George Voinovich.

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OPINIONS

The decision of the United States Court of Appeals for the Sixth Circuit is unpublished (J.A. 16-17), as is the decision of the United States District Court for the Southern District of Ohio (J.A. 4-9).

JURISDICTION

The Sixth Circuit rejected petitioner's motion for reconsideration on July 14, 2000 (J.A. 18), and he filed his petition for a writ of certiorari on September 25, 2000. Jurisdiction in this Court exists under 29 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS AND RULES OF CIVIL AND APPELLATE PROCEDURE

The relevant statutory provisions and rules are reprinted in the Appendix to this brief.

STATEMENT

In 1999, Dale G. Becker filed a *pro se* civil-rights action against various officials of the State of Ohio regarding the conditions of his confinement in the Chillicothe Correctional Institution. He brought the action in federal district court under 42 U.S.C. § 1983, and requested relief solely on behalf of himself.

On August 27, 1999, the district court issued a written order and judgment dismissing his claim. J.A. 4-9, 10-11. In the aftermath of that decision, Mr. Becker chose to file a *pro se* appeal. Using a government-printed form for notices of appeal, he proceeded to fill in the blank lines on the form with the requested information. He thus typed the name of the party taking the appeal ("Dale G. Becker"), his address, the date of the appeal, and the caption of the district court case, which included the name of the federal district court, the judge, the defendants, the docket number and the date of the judgment being appealed. *See* J.A. 12. He then filed the one-sentence

notice of appeal with the district court on September 13, 1999, which was well within the 30 days required by rule for appealing the August 27, 1999 judgment against him.

The dispute that followed did not stem from any misinformation or lack of information provided in the notice. It arose from the way Mr. Becker signed the line on the notice of appeal labeled "Counsel for Appellant." Instead of writing his name by hand on the notice, he typed it by hand. J.A. 12.

The decision to type his signature rather than complete it with pen and ink did not initially generate any attention, let alone a jurisdictional dispute. Indeed, the government-printed form itself did not mention any signature requirement or for that matter any preference for one form of signature over another. For its part, the district court accepted the notice of appeal, proceeded to docket it, and the next day sent a copy of it to the court of appeals. The district court never notified Mr. Becker that the notice contained any deficiencies. And, in fact, the district court later accepted, and ultimately granted, a separate motion filed with the district court allowing Mr. Becker to proceed *in forma pauperis* on appeal. J.A. 1-2.

The Sixth Circuit initially proceeded along the same lines. It docketed Mr. Becker's appeal on October 27, 1999, assigned it a case number, and sent him a letter explaining the briefing schedule. J.A. 13-15. The letter also explained that "[t]he court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case." J.A. 13. After Mr. Becker filed his opening merits brief in the Sixth Circuit, the state officials chose not to file a response brief and so informed the court on November 3, 1999. J.A. 2. At roughly the same time, Mr. Becker attempted to have his appeal consolidated with another appeal he had brought before the Sixth Circuit, but the court denied (rather than dismissed) his request. *Id.*

At no time during the course of these initial appellate proceedings did the state officials object to the information contained in, or the form of, the notice of appeal. Nor did they ever question Mr. Becker's intention to proceed with his appeal. To its credit, the State has acknowledged that it fully appreciated his desire to appeal:

> We cannot honestly claim any uncertainty about petitioner Becker's intention to pursue an appeal once he filed his timely, though unsigned notice of appeal in the district court. We never objected to the lack of a signature on his notice of appeal, and fully expected the court of appeals to address his appellate arguments on the merits.

State's Response to Petition for Writ of Certiorari, at 5.

The court of appeals, however, viewed the matter differently. Seven months after Mr. Becker filed his notice of appeal, the court dismissed the case because he allegedly had not signed the notice. From the court's vantage point, an appellant's typewritten signature, as opposed to a pen-and-ink signature, does not suffice to vest the court with jurisdiction to hear the appeal. J.A. 16. "This court lacks jurisdiction" over the appeal, the Sixth Circuit's six-sentence order concluded, because the notice of appeal "was not signed by the *pro se* appellant or by a qualified attorney." *Id.* Believing that the absence of a "signature" could not be cured after the passage of the 30-day filing limit provided by Rule 4, the court found no possibility of curing the alleged defect. *Id.*

In reaching this result, the court relied on its decision in *Mattingly v. Farmers State Bank*, 153 F.3d 336 (6th Cir. 1998). In that case, the Sixth Circuit dismissed an appeal involving an unsigned notice of appeal that was brought on behalf of two appellants. The court reasoned as follows:

> Fed. R. App. P. 4(a)(1), in conjunction with Fed. R. Civ. P. 11(a), requires that a party sign the notice of appeal in order to confer jurisdiction on the courts of appeals. The

> complete failure to sign a notice of appeal cannot be viewed as the functional equivalent of doing so. In order for a litigant's acts to be considered as the functional equivalent, they must be such that the document affords notice to the appellee of the litigant's intent to seek appellate review.

Id. at 337. Acknowledging that "dismissal of an appeal where a party inadvertently fails to sign a notice of appeal may produce harsh results," the court concluded that the result was "mandated by any fair reading of the rules" and that "'the harshness of our construction is imposed by the legislature and not by the judicial process.'" *Id.* at 337-38 (quoting *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 318 (1988)) (additional internal quotation omitted).

Relying on *Mattingly*, the Sixth Circuit dismissed Mr. Becker's case on May 12, 2000. Before doing so, however, it did not ask for briefing regarding the application of *Mattingly* to a case involving just one appellant and a typewritten signature, but instead *sua sponte* dismissed the appeal.

Soon thereafter, Mr. Becker filed a timely motion for reconsideration. In it, he asked the court to reconsider its decision and to accept a new, "signed" notice of appeal that he had attached to the pleading. On July 14, 1999, however, the panel denied the motion. J.A. 18.

SUMMARY OF ARGUMENT

The Sixth Circuit's decision should be reversed. The language of the applicable rules, precedent and common sense all point to a contrary ruling.

1. As an initial matter, Mr. Becker *did* sign the notice of appeal. While he completed the notice of appeal with a typewritten designation of his name rather than a handwritten one, that does not mean the words amounted to anything less than a "signature." Dictionary definitions of the term

"signature," like common law interpretations of other signature requirements, extend to typewritten descriptions of one's name. And the applicable civil and appellate rules offer no hint that a handwritten signature is compelled.

2. But even if the Court concludes (or assumes) that this notice of appeal lacked a "signature," that does not require dismissal of the appeal. By their terms, the rules of appellate and civil procedure do not say that unsigned notices of appeal must be dismissed for lack of jurisdiction. Not one of the Federal Rules of Appellate Procedure, for example, requires that a notice of appeal be signed by the party's attorney or by the party. Although the Appellate Rules contain numerous other requirements, they say not a word about the necessity of a signature on the notice of appeal. And while Rule 11 of the Federal Rules of Civil Procedure requires that all "papers" filed in the district court be "signed" by the attorney or party, that provision does not automatically require unsigned filings to be dismissed for lack of jurisdiction. To the contrary, Rule 11 is repentant in nature, providing that "unsigned paper[s]" shall be "stricken" only if the "omission of the signature" is not "corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a). In this instance, neither the district court, the court of appeals, nor the State called Mr. Becker's attention to the absence of a handwritten signature. The predicate for striking his notice of appeal thus does not exist.

Rule 3 of the Rules of Appellate Procedure confirms that such errors in form do not require dismissal of an appeal. It states that "[a]n appeal must not be dismissed for informality of form or . . . for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4). Here, of course, no doubt existed about who was taking the appeal. The notice of appeal identified "Dale G. Becker" twice as the appellant—first, by identifying him as such in the body of the notice, then by identifying him as

Counsel of Record. And, if anything, Mr. Becker erred on the side of being too formal (a typewritten signature) rather than being too informal (a handwritten signature).

3. Three decisions of the Court bolster this interpretation. *See Smith v. Barry*, 502 U.S. 244 (1992); *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988); *Foman v. Davis*, 371 U.S. 178 (1962). As these cases collectively demonstrate, a notice of appeal contains just two jurisdictional requirements—that it be filed within the 30 days required by Rule 4 and that it satisfy the notice requirements of Rule 3. *See Smith*, 502 U.S. at 248-49 ("[i]f a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal"). And all Rule 3 requires in the way of notice is that the notice of appeal specify the party taking the appeal, designate the judgment, and name the court to which the appeal is taken. Fed. R. App. P. 3(c)(1). Without question, Mr. Becker satisfied each of these notice requirements.

ARGUMENT

Under Article III of the United States Constitution, "[t]he judicial Power of the United States, shall be vested . . . in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const., art. III. This grant of authority allows Congress not only to create federal courts of appeal but also to establish appropriate rules and requirements regarding their jurisdiction. All agree that this power includes the authority to establish deadlines for filing appeals, as well as authority to create requirements regarding the contents of each notice of appeal. And all agree that Congress may make compliance with these rules a jurisdictional prerequisite to review in the United States Courts of Appeal. *See Willy v. Coastal Corp.*, 503 U.S. 131, 136 (1992) ("Congress . . . may enact laws regulating the conduct of those courts" that it creates); *Hanna v. Plumer*, 380 U.S. 460, 472 (1965) ("the constitutional provision for a federal court system (augmented

by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts"); *Sibbach v. Wilson & Co.*, 312 U.S. 1, 9-10 (1941) ("Congress has undoubted power to regulate the practice and procedure of federal courts"). *See also Swint v. Chambers County Comm'n*, 514 U.S. 35, 48 (1995) ("The Rules Enabling Act, 28 U.S.C. § 2071 *et seq.*, gives this Court 'the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts . . . and courts of appeals' § 2072(a).").

Agreement ends, however, when it comes to application of these principles and the relevant procedures to Mr. Becker's appeal. Whether by statute or by rule, Congress has never established that a jurisdictional prerequisite to review in the courts of appeal is the signing of a properly-completed notice of appeal or that the signing must be done with a pen rather than with a typewriter. To the contrary, the terms of the relevant provisions indicate that Mr. Becker did all that the rules required of him in order to invoke the jurisdiction of the appellate court. The Sixth Circuit's contrary decision should be reversed, and Mr. Becker's appeal should be allowed to proceed to the merits.

I. NEITHER THE APPELLATE NOR CIVIL RULES ESTABLISH THAT A HANDWRITTEN SIGNATURE ON A NOTICE OF APPEAL IS A JURISDICTIONAL NECESSITY.

A. By Their Terms, The Pertinent Rules Do Not Contain Any Such Requirement.

> [Notices of appeal] must specify the party or parties taking the appeal . . . ; designate the judgment, order or part thereof appealed from; and name the court to which the appeal is taken.
>
> An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

Fed. R. App. P. 3(c)(1)(A) & (c)(4).

> [T]he notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

Fed. R. App. P. 4(a)(1)(A).

> Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Fed. R. Civ. P. 11(a).

In one respect, as these provisions make clear, the Sixth Circuit was correct: The 30-day deadline for filing a notice of appeal is jurisdictional. *See* 28 U.S.C. § 2107(a) ("no appeal shall bring any judgment . . . of a civil nature before a court of appeal for review unless notice of appeal is filed, within thirty

days after the entry of such judgment"); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 264 (1978) (notice-of-appeal timing requirements are "mandatory and jurisdictional") (quoting *United States v. Robinson*, 361 U.S. 220, 229 (1960)). Where the court erred, however, was in further concluding that these rules create an unyielding signature requirement that is jurisdictional in nature and that a typewritten signature fails to satisfy this mandate.

Appellate Rules 3 and 4 say not a word about signing a notice of appeal. The only rule that suggests anything to the contrary is Civil Rule 11, which requires all papers filed in the district court to be "signed" by the attorney or party and to be stricken unless the absence of a "signature" is corrected soon after being called to the attention of the party. In concluding that Civil Rule 11, when read in conjunction with Appellate Rules 3 and 4, requires the dismissal of an "unsigned" notice of appeal, the Sixth Circuit made at least two mistakes. First, the rules do not foreclose typewritten, as opposed to handwritten, signatures. Second, whatever the nature of the signature requirement, the court of appeals' jurisdiction over an appeal does not turn on it.

1. By Typing One's Name On The Signature Line of the Notice of Appeal, An Appellant Satisfies Rule 11.

As an initial matter, the "signature" requirement of Civil Rule 11 may be satisfied by a typewritten signature, as opposed to a pen-and-ink signature. Neither the Appellate nor the Civil Rules, it is true, define the noun "signature" or the verb "sign," which both appear in Rule 11. But several dictionary definitions of "signature" include "typewritten" identifications of a name. Of particular relevance are definitions of the term circa 1938 when Rule 11 came into existence. *See* 308 U.S. 645, 676 (1938). For example, the Third Edition of Black's Law Dictionary, published in 1933, lists several definitions of "signature," including one that covers "[a] printed, *typewritten*,

or rubber-stamped name." Black's Law Dictionary, 1629 (3d ed. 1933) (emphasis added). Later editions are to similar effect. *See, e.g.*, Black's Law Dictionary, 1553 (4th ed. 1951) ("[t]he act of putting down a man's name at the end of an instrument to attest its validity," which "may be written by hand, printed, stamped, *typewritten*, engraved, photographed, or cut from one instrument and attached to another") (emphasis added); Black's Law Dictionary, 1239 (5th ed. 1979) (defining signature as "[t]he act of putting one's name at the end of an instrument to attest its validity," which "may be written by hand, printed, stamped, *typewritten*, engraved, photographed, or cut from one instrument and attached to another") (emphasis added); *id.* (noting that it is "immaterial with what kind of instrument a signature is made"); Black's Law Dictionary, 1381-82 (6th ed. 1990) (same). These dictionary definitions parallel others that would seem to permit a typewritten designation of a name. *See* The New Century Dictionary, 1712 (1927) (defining "signature" as "in general, a distinguishing mark; a stamp or impression"); Ballentine's Law Dictionary (3d ed. 1969) ("The name of a person appended by him to an instrument."); *id.* (defining only a "written signature" as "requiring that the signature shall be in one's own handwriting").

Other definitions of the term, it bears acknowledging, are more equivocal. Several of them hint at, or seem only to cover, handwritten identifications of a name. *See, e.g.*, 9 The Oxford English Dictionary, 35 (1933) ("to sign, mark, etc. . . . The action of signing one's name, or of authenticating a document by doing so"); Webster's Third New International Dictionary, 2116 (1981) ("the name of a person written with his own hand to signify that the writing which precedes accords with his wishes or intentions"); Black's Law Dictionary, 1387 (7th ed. 1999) ("A person's name or mark written by that person or at the person's direction"). These definitions, however, either do not specifically or do not functionally preclude a typewritten name.

Numerous cases support the view that typewritten identifications of a name will suffice to create a "signature." While no case law to our knowledge addresses the issue in the specific context of a notice of appeal, the term has been used to cover a wide variety of signature methods in a wide variety of contexts:

(1) Temporary writ—*Loughren v. B.F. Bonniwell & Co.*, 101 N.W. 287, 288 (Iowa 1904) ("[T]he instrument must be signed by a person authorized by statute, but this signature need not be made with pen and ink, or even with a pencil. A mark or signature made by another with authority, or even a printed signature, intended as such, has generally been held as sufficient."); *id.* ("Facsimile stamps such as were used in this case are quite common in these days of haste and hurry, and courts have generally regarded such a signature as sufficient, and the equivalent of a signing with a pen and ink or pencil.").

(2) Bank notes—*Hill v. United States*, 288 F. 192 (7th Cir. 1923) ("The facsimile signatures of the officers of the bank were upon the note when it was put out by the bank, and there can be no question but that, in law, they are the true and genuine signatures of those officers."); *Maricopa County v. Osborn*, 136 P.2d 270, 274-75 (Ariz. 1943) (holding that "facsimile signature of the state treasurer" sufficed to validate bonds and relying on definition that includes a "typewritten" signature).

(3) Indictment—*Hamilton v. State*, 2 N.E. 299, 300 (Ind. 1885) ("On the same principle, the 'signing' of a written instrument or pleading by a person or officer has a much broader and more extended meaning than attaching his 'written signature' to it implies. When a person attaches his name or causes it to be attached to a writing by any of the known modes of impressing his name upon paper, with the intention of signing it, he is regarded as having 'signed' the writing.").

(4) Judicial order—*Daniels v. Stovall*, 660 F. Supp. 301, 303 (S.D. Tex. 1987) ("use of a rubber stamped signature is acceptable" where the stamp is used in the presence of a judge and at his direction); *Salt Lake City v. Hanson*, 425 P.2d 773, 774 (Utah 1967) ("While one's signature is usually made by writing his name, the same purpose can be accomplished by placing any writing, indicia or symbol which the signer chooses to adopt and use as his signature and by which it may be proved: *e.g.*, by finger or thumb prints, by a cross or other mark, or by any type of mechanically reproduced or stamped facsimile of his signature, as effectively as by his own handwriting.").

(5) Search warrant—*Stork v. State*, 23 S.W.2d 733, 735 (Tex. Crim. App. 1929) ("[I]t would be a matter of no moment whether he so affixed said name by one stroke as by use of a stencil or rubber stamp, or *whether he sat down at a typewriter* . . . or wrote it out in what we commonly call longhand . . . . In either event he has signed his name to the document.") (emphasis added).

(6) Traffic court decision—*Pa. Dep't of Transp., Bureau of Traffic Safety v. Ballard*, 331 A.2d 578, 580 (Pa. Commw. Ct. 1975) ("[T]he validity of signatures made with a rubber stamp which makes a facsimile of one's own signature has been recognized in Pennsylvania since the late nineteenth century.").

(7) Clerk of Court—*Costilla Estates Dev. Co. v. Mascarenas*, 267 P. 74, 77 (N.M. 1927) ("This statute does not require the clerk to write his name; only that he sign it. Generally a signature, if adopted as such, may be printed, lithographed, or typewritten, as well as written.").

(8) Summons—*Herrick v. Morrill*, 33 N.W. 849, 850 (Minn. 1887) ("[A]ny signature, whether written, printed, or lithographed, which the party issuing the summons may adopt as his own, will be sufficient. Any of these will accomplish the

desired purpose, and give the defendant all the necessary information.").

(9) Bill of lading—*Carna v. Bessemer Cement Co.*, 558 F. Supp. 706, 708 (W.D. Pa. 1983) ("Generally, in the absence of a statute otherwise providing, a signature may be affixed by writing by hand, by printing, by stamping, or by various other means.") (quoting 80 C.J.S. *Signatures* § 7 (1953)).

(10) Contract—*Joseph Denunzio Fruit Co. v. Crane*, 79 F. Supp. 117, 128-29 (S.D. Cal. 1948) ("[T]he court must take a realistic view of modern business practices, and can probably take judicial notice of the extensive use to which the teletype machine is being used today among business firms, particularly brokers, in the expeditious transmission of typewritten messages. . . . [T]his court will hold that the teletype messages in this case satisfied the Statute of Frauds in California.").

This ecumenical tradition of recognizing a wide variety of signature methods continues to the present day. A 1996 amendment to Rule 5 of the Federal Rules of Civil Procedure now allows federal courts to accept the electronic filing, signing, and verification of documents:

> A court may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. *A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.*

Fed. R. Civ. P. 5(e) (emphasis added).

In exercising the discretion that this amendment delegates to each federal court, the Northern District of Ohio (to use one example) has adopted a local rule that expressly permits electronic filing. *See* Loc. Civ. R. 5.1. Under this local rule, the court provides all registering attorneys with an

identification name and password that allows access to the Court's system of electronic filing. "The identification name and password," the district court has said, "will also serve as the attorney's signature for Fed. R. Civ. P. 11 purposes on all documents that are filed electronically." *See* New Electronic Case Management System, at 1; Electronic Filing Policies and Procedures Manual, at 4, United States District Court Northern District of Ohio (available at www.ohnd.uscourts.gov/Electronic_Filing). A set of civil rules that accommodates signatures by the most up-to-date electronic gadget surely may accommodate signatures by a throwback manual typewriter.

Not only is there an affirmative legal tradition permitting documents to be signed in a variety of ways, but there is no legal tradition to our knowledge requiring hand-written signatures on notices of appeal. Indeed, even petitions for a writ of certiorari or appeals to this Court do not require a hand-written signature. A typed identification of the name of counsel and the party suffices. In the face of these traditions and these common law and dictionary definitions and in the absence of any contrary historical or modern tradition for notices of appeals, it appears that one unexamined premise of the court of appeals' decision was mistaken: Nothing in the Appellate or Civil Rules requires a signature to be written by hand in ink rather than typed by hand. On this ground alone, the decision below should be reversed.

2. The Signature Requirement Is Not Jurisdictional In Nature.

Even if the term "signature" precludes a typewritten identification of one's name, that does not require the dismissal of this appeal. On their face, the Appellate and Civil Rules nowhere establish that such signatures represent jurisdictional prerequisites to review in the United States Courts of Appeal.

To begin, the two most pertinent Appellate Rules—Rule 3 and Rule 4—say nary a word about a jurisdictional signature

requirement applicable to all litigants. Rule 4 establishes an unyielding timing requirement for filing a notice of appeal, and Rule 3 establishes more modest requirements regarding the content of the notice of appeal. The absence of a general signature requirement in these two locations (or for that matter anywhere else in the Appellate Rules) casts considerable doubt on the notion that the drafters of the Appellate Rules meant to compel federal appellate courts automatically to dismiss unsigned notices of appeal on jurisdictional grounds. Even if one thinks a rigid signature requirement makes abundant sense, no good reason exists for imposing it silently.

The Appellate Rules, at any rate, specify that errors of this sort in notices of appeal *do not* require dismissal. Rule 3 was amended in 1993 precisely to make this point. It now says that "[a]n appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4). The Advisory Committee Note accompanying this amendment explains that "dismissal of an appeal *should not occur* when it is otherwise *objectively clear that a party intended to appeal*. If a court determines it is objectively clear that a party intended to appeal, there are neither administrative concerns nor fairness concerns that should prevent the appeal from going forward." Fed. R. App. P. 3 advisory committee's note (emphasis added). The decision to type rather than hand-write a signature would seem to be exactly the kind of mistake (if a mistake it was) that requires an appeal "not [to] be dismissed." Any concerns about notice were met by the "signature" that was given, one that left no room for doubt who the appealing party was and one that the State in fact perfectly understood. *See* State's Response to Petition for a Writ of Certiorari, at 5.

Appellate Rule 26 adheres to this same substance-over-form preference. It says that "[f]or good cause shown, the court may extend the time prescribed by these rules or by its

order to perform any act, or may permit an act to be done after time expires"—except with respect to extending the time to file a notice of appeal. Fed. R. App. P. 26(b). Save when a litigant does not meet the filing deadline at all, in other words, Rule 26 allows appellate courts to "permit an act to be done after that time expires." To the extent a pen-and-ink signature remains a requirement under the civil or appellate rules, Appellate Rule 26(b) thus indicates that appellants may perform this "act" after the notice of appeal has been filed. The same suggestion appears in Appellate Rule 2, which permits courts of appeals to "suspend any provision of these rules in a particular case and order proceedings as it directs"—except again for the 30-day filing deadline.

Appellate Rules 2 and 26 also account for the sole reference to signatures in the Rules of Appellate Procedure. Rule 3 states that "[a] *pro se* notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise." Fed. R. App. P. 3(c)(2). This provision thus indicates that when a *pro se* litigant files an appeal, he will be presumed to do so on behalf of his entire family; it does not create a jurisdictional signing requirement. But even if Rule 3(c)(2) were construed to impose a signing requirement on *pro se* appellants (and paradoxically on *pro se* appellants alone), that requirement would fall within the discretionary range of Rules 2 and 26 and thus would permit correction of mistakes after the fact. Again, only the 30-day filing deadline is excluded from the leniency that these rules authorize appellate courts to exercise.

Civil Rule 11 completes the picture. In requiring a signature on all pleadings, it does not say that all unsigned pleadings will be automatically dismissed. It instead says that "[a]n unsigned paper shall be stricken *unless* omission of the signature is corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a)

(emphasis added). In this instance, neither the district court, the court of appeals, nor the State brought this alleged defect to "the attention of" Mr. Becker. Accordingly, the textual predicate for dismissing an appeal under Civil Rule 11 simply does not exist. In the last analysis, the Civil and Appellate Rules by their terms do not permit courts of appeal automatically to dismiss an appeal on jurisdictional grounds whenever the notice has not been signed.

B. The Court's Cases Confirm This Interpretation.

The Court's cases, like the language of the applicable rules, confirm that signing a notice of appeal is not a jurisdictional prerequisite to appellate review. All that is required is that the would-be appellant give "sufficient notice" to the parties and the court that an appeal has been filed—what the Court has described as the "functional equivalent" of what Appellate Rules 3(c) and 4 require. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 (1988). As that requirement was adequately and amply met here, this appeal should be allowed to proceed to the merits.

1. A Notice of Appeal Contains Two Jurisdictional Requirements—That It Be Filed Within the 30 Days Required by Rule 4 and That It Satisfy the Notice Requirements of Rule 3.

Three cases decided by the Court inform the resolution of this question and go a long way toward answering it. In the first of them, *Foman v. Davis*, 371 U.S. 178 (1962), the Court addressed the requirement in Rule 3(c) that a notice of appeal "designate the judgment, order or part thereof appealed from." After the district court dismissed plaintiff's case, he simultaneously moved to vacate the decision and amend his complaint as well as appeal the adverse decision. When the district court denied his motions, he then filed a second notice of appeal. The court of appeals held that the first notice of

appeal was premature (in view of plaintiff's pending motions) and that the second notice of appeal was inadequate (in view of his failure to designate the initial dismissal as the judgment being appealed).

In reversing the lower court's decision, the Court initially observed that "[t]he defect in the second notice of appeal did not mislead or prejudice the respondent." *Id.* at 181. "With both notices of appeal before it," the Court ultimately concluded that the lower court "should have treated the appeal from the denial of the motions as an effective, although inept, attempt to appeal from the judgment sought to be vacated." *Id.*

> It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Id. at 181-82 (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)).

Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988), picks up where *Foman* left off. There, the appellant filed his notice of appeal within the 30-day time limit of Rule 4 but failed to satisfy the identification-of-parties requirement of Rule 3(c). In determining whether that defect presented a jurisdictional bar to appellate review, the Court built on the *Foman* analysis. "We do not dispute," the Court stated at the outset, "the important principle for which *Foman* stands—that the requirements of the rules of procedure should be liberally construed and that 'mere technicalities' should not stand in the way of consideration of a case on the merits." *Id.* at 316. Accordingly, "if a litigant files papers in a fashion that is

technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the *functional equivalent* of what the rule requires." *Id.* at 316-17 (emphasis added).

On the record in *Torres*, however, the Court found no such functional equivalence. Appellant's name, it turned out, did not even appear on the notice of appeal. Instead, he relied on the fact that the notice listed several appellants specifically, then ambiguously added the phrase "*et al.*" Because the claimant "was never named or otherwise designated, however inartfully, in the notice of appeal filed by the 15 other intervenors," and because the "purpose of the specificity requirement of Rule 3(c) is to provide notice both to the opposition and to the court of the identity of the appellant or appellants," the Court concluded that he "did not file the functional equivalent of a notice of appeal." *Id.* at 317-18.

In reaching this conclusion, the Court also observed that the notice requirements of Rule 3(c) and the 30-day filing requirement of Rule 4 form a "single jurisdictional threshold." *Id.* at 315. As the Court explained:

> [T]he mandatory nature of the time limits contained in Rule 4 would be vitiated if courts of appeals were permitted to exercise jurisdiction over parties not named in the notice of appeal. Permitting courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the time for filing a notice of appeal.

Id. at 315.

The final case in the trilogy is *Smith v. Barry*, 502 U.S. 244 (1992). At stake in *Smith* was whether an appellate *brief* that was filed within the 30-day appeal deadline could cure the filing of a premature notice of appeal. After appellant, a *pro se* litigant, filed a premature notice of appeal, the court of appeals asked him to file an "informal brief" regarding his legal

position. Appellant completed the informal brief as requested, and fortuitously delivered it to the court of appeals within the proper time for filing his notice of appeal. The court of appeals held that the notice was untimely and that the informal brief did not amount to the "functional equivalent" of a notice of appeal. *Id.* at 247.

The Court reversed. Relying on *Foman* and *Torres*, the Court observed that an otherwise defective notice of appeal may suffice as its "functional equivalent" when it provides "sufficient notice" to the other parties and to the court. *Id.* at 248. Accordingly, "[i]f a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal." *Id.* at 248-49. The Court also concluded that the Appellate Rules "do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal . . . if the filing is timely under Rule 4 and conveys the information required by Rule 3(c)." *Id.* at 249. "Such treatment," the Court reasoned, is appropriate "under Rule 3(c)'s provision that '[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal.'" *Id. See also id.* at 250 (Scalia, J., concurring in the judgment) (agreeing with this interpretation of Rule 3(c)).

The lesson of these cases is straightforward: A defective notice of appeal does not stand as a jurisdictional bar to review unless the appellant fails to meet the 30-day filing deadline that Rule 4 establishes or fails functionally to provide the information in the notice that Rule 3 requires. Combining stringent rigidity and forgiving leniency in equal measure, this interpretation respects the dual directives of the Appellate Rules. *Compare* Fed. R. App. P. 3(a)(2) ("[a]n appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal"), *and* Fed. R. App. P. 3(c)(4) ("[a]n appeal must not be dismissed for informality of form or title of the notice of appeal") *with* Fed. R. App. P. 4(a)(l)(A) ("the notice of appeal . . . must be filed

with the district clerk within 30 days after the judgment or order appealed from is entered").

This interpretation is also consistent with the "venerable maxim *de minimis non curat lex* ('the law cares not for trifles')," which "is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wis. Dep't of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 231 (1992); *see also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992) ("Of course the generally applicable principle *de minimis non curat lex* ensures that jurisdiction may not be predicated on purely trivial effects in the United States."). In this respect, the Appellate Rules do not convert "*de minimis*" mistakes into jurisdictional defects; only substantive mistakes—missing the filing deadline or failing to give adequate notice of the nature of the appeal—rise to the level of jurisdictional impediments.

2. Mr. Becker's Notice of Appeal Satisfies These Requirements.

The teachings of *Foman*, *Torres*, and *Smith* apply with full force to Mr. Becker. And they each suggest that his appeal should be allowed to proceed.

As an initial matter, if the filing of an "informal brief" suffices as a notice of appeal, as *Smith* concludes, then surely a fulsome notice of appeal missing only a handwritten signature suffices in this case. Toleration of the greater deficiency in *Smith* would seem to require toleration of the lesser deficiency here.

Nor can it tenably be denied that Mr. Becker's notice of appeal amounts to the "functional equivalent" of a notice of appeal, if not the real thing. He filed the notice well within the time limits of Rule 4 and satisfied each of the content/notice requirements of Rule 3. Rule 3 says that "[t]he notice of appeal must:

> (A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice . . . ;
>
> (B) designate the judgment, order, or part thereof being appealed; and
>
> (C) name the court to which appeal is taken.

Fed. R. App. P. 3(c)(1).

As a brief glance at the notice of appeal confirms, Mr. Becker satisfied each of these conditions, and more. The notice identified the party taking the appeal, the plaintiff in the judgment being appealed, the defendants, as well as the federal district court, judge, docket number and date of the judgment being appealed. J.A. 12. Leaving no doubt about who the appellant was, Mr. Becker then added his typed (but not handwritten) identification on the line designated "Counsel for Appellant." It is difficult to imagine what further notice could have been provided by the kind of signature that the Sixth Circuit seemingly required. If this is not functional equivalence, it is hard to imagine what is; and if this is not the kind of "informality of form or title" that Rule 3(c) permits, then it is difficult to imagine what mistakes the rule would still forgive.

Nor will this approach nullify the signature requirements of Civil Rule 11 or the policy objectives underlying the rule. For one, district court clerks still may adhere to the letter of the rule— by insisting at the outset on a signature (or even a particular kind of signature) and by enforcing the Damoclean consequences of non-compliance. For another, failure to sign the notice may be cured at the direction of the court of appeals in accordance with its discretionary powers under Rule 2. As the Court indicated in *Smith*: "Having accepted [the brief] as the notice of appeal required by Rule 3, an appellate court might require timely filing of a second document meeting its standards for a brief or, if the paper meets those standards, take such other action as it deems appropriate to ensure that the

filing sequence contemplated by the Rules is not disturbed." 502 U.S. at 249. So too here. The Sixth Circuit still may require a handwritten signature since it is not part of the 30-day deadline. For still another reason, the district and appellate courts remain free to treat the typewritten signature as satisfying the supposed handwritten-signature requirement. Indeed, the acceptance of this notice of appeal here suggests that very thing and accordingly puts litigants (like Mr. Becker) on notice that the decision to type a signature will not excuse failure to comply with the good-faith requirements of Rule 11.

In the last analysis, Mr. Becker did all that the rules required of him—both in form and in substance. A contrary conclusion would exalt the "purely trivial" (*Weltover*, 504 U.S. at 618) over the truly substantive. His appeal should be allowed to proceed.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

28 U.S.C. § 2107 provides in part:

> (a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.
>
> (b) In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

Rule 1(b) of the Federal Rules of Appellate Procedure provides, in part:

> These rules do not extend or limit the jurisdiction of the courts of appeals.

Rule 2 of the Federal Rules of Appellate Procedure provides:

> On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Rule 3(a) of the Federal Rules of Appellate Procedure provides, in part:

> An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.

Rule 3(c) of the Federal Rules of Appellate Procedure provides, in part:

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

Rule 4(a)(1) of the Federal Rules of Appellate Procedure provides:

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

Rule 4(a)(4) of the Federal Rules of Appellate Procedure provides:

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) For a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

Rule 4(c) of the Federal Rules of Appellate Procedure provides:

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail

system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

Rule 26(b) of the Federal Rules of Appellate Procedure provides:

> For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:
>
> (1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or
>
> (2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

Rule 11(a) and (b) of the Federal Rules of Civil Procedure provides:

> (a) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
>
> (b) By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

FEB 22 2001

Supreme Court, U.S.
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FEB 22 2001
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No. 00-6374

In The Supreme Court Of The United States

DALE G. BECKER,
Petitioner,

v.

BETTY MONTGOMERY, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS (SUPPORTING PETITIONER)

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BEST AVAILABLE COPY

QUESTION PRESENTED

When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?

PARTIES

The Petitioner is Dale G. Becker, an Ohio prison inmate.

The Respondents are the Attorney General of Ohio (Betty Montgomery); various Ohio prison inspectors, prison wardens and prison administrators (Mal Payne, Kay Carneine, L.C. Coval, Ernie Moore, Fred McAninch, Gary Mohr, Michael Randall, Bobbie McKeever, Danny Pfeifer, Kenneth Ebetts); and Ohio's former Governor (George V. Voinovich).

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No. 00-6374

In The Supreme Court Of The United States

DALE G. BECKER,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS (SUPPORTING PETITIONER)

OPINIONS BELOW

The order of the court of appeals, Joint Appendix (J.A.) 16-17, is unreported. The opinion of the district court, J.A. 4-9, is unreported.

JURISDICTION

The court of appeals entered its judgment on May 12, 2000. A petition for rehearing was denied on July 14, 2000. J.A. 18. The petition for a writ of certiorari was filed on September 25, 2000, and was granted on January 8, 2001.

J.A. 19. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

FEDERAL RULES INVOLVED

Relevant provisions of Rule 11 of the Federal Rules of Civil Procedure provide:

> (a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

The complete text of the rule is reproduced in an appendix to this brief at 1a-4a.

Rule 1 of the Federal Rules of Civil Procedure is likewise reproduced in the appendix to this brief at 1a, Rule 3 of the Federal Rules of Appellate Procedure is reproduced at 4a-6a, and Rule 4 of the Federal Rules of Appellate Procedure is reproduced at 7a-12a.

STATEMENT

Petitioner Dale G. Becker, an inmate at the Chillicothe Correctional Institution in Ohio, filed suit under 42 U.S.C. 1983 against the respondent state officials in August 1999, alleging that they had intentionally exposed him to secondhand cigarette smoke during his confinement at the prison. He sought compensatory and punitive damages, as well as equitable remedies, including the implementation of new procedures for separating smokers from non-smokers in the State's correctional facilities.

When Becker's *pro se* complaint arrived at the district court in Columbus, Ohio, the court followed the procedure spelled out in 28 U.S.C. 1915A(a), which directs the district courts to "review, before docketing, . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee." That same statute permits the district courts to dismiss such a complaint if it is "frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. 1915A(b)(1).

During that initial screening process, the district court concluded that Becker's complaint did indeed fail to state a claim upon which relief could be granted, as it did not indicate the date or dates on which Becker had allegedly been exposed to secondhand smoke, and did not allege with any particularity the intentional conduct of the various defendants that might have led to the injuries Becker claimed. Also, according to the district court, Becker had failed to show that he had exhausted his prison administrative remedies for redressing his concerns, as 42 U.S.C. 1997e(a) requires ("No action shall be brought with respect to prison conditions under section 1983 . . . by a prisoner confined in any . . . prison . . . until such administrative remedies as are available are exhausted.").

The district court dismissed Becker's complaint in a written order and judgment entry filed on August 27, 1999. J.A. 4-9, 10-11.

Becker then filed a timely notice of appeal in the district court 24 days later. As with his complaint, he filed the notice of appeal *pro se*. He used a Government Printing Office form for notices of appeal, filling in the blank lines as required with typewritten information about the parties' names, the district court case number, and his address. J.A. 12. His typewritten information on the notice of appeal

indicates that Becker intended to appeal the district court's August 27, 1999 judgment.

On the form's blank line beneath which appear the words "Counsel for Appellant" in parentheses, Becker typed his name: Dale G. Becker. The GPO form that Becker used does not mention signatures or a signature requirement, and Becker did not sign the one-page notice that he filed with the district court.

The district court's docket shows that the clerk there received and filed Becker's unsigned notice of appeal on September 20, 1999, and, as Fed. R. App. P. 3(d)(1) directs, the clerk sent a copy of it to the court of appeals the next day. The court of appeals assigned a case number to Becker's appeal, and set a briefing schedule for the parties. J.A. 13-15. Neither the district court nor the court of appeals then questioned the validity of Becker's unsigned notice of appeal, and defendants' counsel did not do so either.

Becker then filed his *pro se* appellant's brief with the court of appeals, and did so more than two weeks earlier than the deadline set by the court. He signed that typewritten brief both on the cover and on the last page. The defendants chose not to file an appellees' brief, and the case was then ready for a decision from the court of appeals on the merits of Becker's challenge to the district court's dismissal of his complaint.

On May 12, 2000 – more than seven months after Becker had filed his timely but unsigned notice of appeal in the district court, and more than six months after Becker had filed his timely and signed appellate brief with the court of appeals – that latter court issued a brief order describing the notice of appeal as "defective because it was not signed by the pro se appellant or by a qualified attorney." J.A. 16-17. According to the court of appeals, the court "lack[ed] jurisdiction over this appeal," and so the court dismissed

Becker's case on that date without addressing the merits of his appeal. The court of appeals did not give Becker an opportunity to correct the notice of appeal, and the May 12th order marked the first time that the lack of a signature on the notice had been raised as an issue in the case.

Becker filed a timely motion for reconsideration in the court of appeals asking that court to reconsider its order and accept his new, signed notice of appeal – which he attached – but the court of appeals denied that motion several weeks later. J.A. 18.

Becker then filed a timely *pro se* petition for certiorari. Because the respondent state officials on whose behalf this brief is filed agreed with Becker that his intent to appeal was clear from his unsigned notice, and agreed with him that the court of appeals should not have dismissed his appeal without giving him an opportunity to correct the lack of a signature on his notice of appeal, we urged the Court to grant the petition and vacate the judgment below.

On January 8, 2001, the Court granted certiorari to review the appellate court's conclusion that an appellant's failure to sign a notice of appeal bars the court of appeals from hearing his case. Respondents now join Becker in urging the Court to reverse the appellate court's judgment. The Court has invited Stewart A. Baker to brief and argue this case as *amicus curiae* in support of the judgment below.

SUMMARY OF ARGUMENT

Rule 11 of the Federal Rules of Civil Procedure requires that every "pleading, written motion, and other paper" filed in the federal district courts "be signed" by an attorney, or by the party if he or she is not represented by an attorney. And the rule directs that any unsigned document "shall be stricken unless omission of the signature is

corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a).

That critical opportunity for prompt correction of the missing signature on the notice of appeal in this case was not afforded by the court below to petitioner Becker. The significance of his omitted signature was "called to [his] attention," *id.*, only in the appellate court's dismissal entry – which the court issued more than seven months after Becker filed what the court of appeals described in that order as a "defective" notice, J.A. 16 – and the court then refused to reconsider when he asked for a chance to correct the alleged defect a few days later.

The appellate court's dismissal order is consistent neither with the current text of Rule 11 nor with the approach that courts in this country have long followed in enforcing signature-requirement rules for legal filings. Rule 11's signature requirement aims to discourage frivolous legal arguments and unfounded factual allegations, but the no-second-chances, automatic-dismissal approach that the court below imposed on the *pro se* litigant in this case furthers none of that rule's goals. The federal appellate and civil-procedure rules are not designed to trap the unwary (and unrepresented) litigant who tries earnestly to comply with them. Just as this Court has pointed in several previous cases to the built-in flexibility that the federal rules contain, so the Court ought to apply the words of Rule 11(a)'s signature requirement – and its critical opportunity for prompt correction – in a reasonable way here that holds true not only to the letter but also to the spirit of that and the other federal rules. And the fact that Rule 11's signature requirement has no counterpart in the federal criminal rules shows that the court below erred in treating signatures as a *sine qua non* of valid notices of appeal in the federal courts.

Our federal courts ought to be open to petitioner Becker as much as to any other litigant who seeks redress, and he has by all appearances made an honest effort to comply with rules that are supposed to be "construed and administered to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. The approach followed by the court of appeals did not "secure the just . . . determination" of this case for petitioner Becker, who was entitled to be heard on his appellate claims, even if, in the end, those claims have no merit, as we believe. The judgment of the court of appeals should be reversed.

ARGUMENT

I. Though Notices Of Appeal In Some Civil Cases Should Be Signed, The Federal Rules Do Not Call For The Automatic Dismissal Of Unsigned Documents.

A. Federal Courts Have Never Treated The Absence Of A Signature On Legal Documents As A Jurisdictional Defect.

For most of this country's history, some court rules have called for parties or attorneys to sign particular legal documents. Yet no court rule has ever compelled any court to dismiss a case automatically for want of a signature, as happened in this case.

The importance of attorney signatures on American legal documents first drew comment in an 1838 treatise by Justice Story, who wrote that a lawyer's signature on equity pleadings stood for the "regularity, relevancy, and decency" of the filings. J. Story, Equity Pleadings, Ch. 11, § 47 (1838). Story traced the signature requirement to 16th-century England, where a legal counselor's signature vouched for the signed document's "good ground." *Id.*

A signature requirement was made part of Rule 24 of the Rules of Practice for the Courts of Equity in 1842, 42 U.S. (1 How.) xxxix, xlviii (1842), as well as the 1912 revision of that rule, 226 U.S. 627, 655 (1912), both of which required a lawyer to sign "[e]very bill" or other pleading, with any such signature considered an official certification that "good ground" existed for the claim raised in the document. Neither rule contained any enforcement mechanism or other penalty for non-signers, though, and those rules' signature requirements "never figured in the decision of a reported case or any proceeding against a lawyer from 1842 to 1938." D. Michael Risinger, Honesty in Pleading and Its Enforcement: Some "Striking" Problems with Federal Rule of Civil Procedure 11, 61 Minn. L. Rev. 1, 14 (1976).

In 1938, the Court implemented Fed. R. Civ. P. 11, and, right from the start, it contained both a signature requirement and an enforcement procedure that covered attorneys and non-attorneys alike. In relevant part, the rule said this:

> Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. . . . If a pleading is not signed or is signed with intent to defeat the purpose of the rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.

Former Fed. R. Civ. P. 11, as promulgated at 308 U.S. 645, 676 (1938).

Despite the tough language, no reported cases during the rule's first several decades point to the dismissal of a case or an appeal for want of a signature, though some courts did allow lawyers to correct unsigned pleadings, or even overlooked the flaw entirely. See, e.g., *Holley Coal Co. v. Globe Indemnity Co.*, 186 F.2d 291, 295 (4th Cir. 1950) (affirming district court's discretion to allow an attorney to file a signed amended answer where – through "oversight" – the first answer was unsigned); *Burak v. Pennsylvania*, 339 F. Supp. 534, 535 n.2 (E.D. Pa. 1972) (describing the absence of a signature on the plaintiff's complaint as "a mere technical defect" that could be overlooked, "especially since none of the defendants has previously pointed to this violation of Rule 11 and alleged prejudice"); *In re Legon*, 85 F. Supp. 946, 947 (S.D.N.Y. 1949) (permitting a party to file amended pleadings where originals had not been signed by a lawyer, and explaining that "[a]lthough Rule 11 . . . requires all pleadings to be signed by counsel, it does not invalidate unsigned pleadings"); *Universal Labs., Inc. v. V. Vivaudou, Inc.*, 8 Fed. Rules Serv. 11.51, Case 1 (S.D.N.Y. 1944) (denying defendants' motion to strike an unsigned complaint where there was "no proof of willful failure or refusal and no prejudice could be claimed by the defendants if the plaintiffs were given leave to sign the pleading heretofore served").

B. Rule 11 Expressly Directs Courts To Give Parties And Lawyers An Opportunity To Correct Unsigned Documents.

In 1983 – the first time that the Court amended the Rule – language was added giving courts the very flexibility reflected in those earlier decisions:

> If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

Former Fed. R. Civ. P. 11, as promulgated at 97 F.R.D. 165, 167 (1983).

That same concept – though reworded in the latest round of changes to the rule in 1993 – remains part of Rule 11 today. Both attorneys and unrepresented parties are to sign all documents filed in the federal district courts in civil cases, and unsigned documents are to be stricken if not "corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11. The Advisory Committee Notes for the 1993 amendments to the rule explain the approach that courts should follow when unsigned documents are filed:

> Unsigned papers are to be received by the Clerk, but then are to be stricken if the omission of the signature is not corrected promptly after being called to the attention of the attorney or *pro se* litigant. Correction can be made by signing the paper on file or by submitting a duplicate that contains the signature. A court may require by local rule that papers contain additional identifying information regarding the parties or attorneys, such as telephone numbers to facilitate facsimile transmissions, though, as for omission of a signature, the paper should not be rejected for failure to provide such information.

Fed. R. Civ. P. 11 Advisory Committee's Notes, 28 U.S.C.A. (1993).

If, as the Court has said, "[w]e give the Federal Rules of Civil Procedure their plain meaning," *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120, 122 (1989) (holding that Fed. R. Civ. P. 11 permits sanctions only against individuals, not law firms), then any decision in this case surely ought to take into account Rule 11(a)'s language

about unsigned papers "being called to the attention of the attorney or party" so that the lack of a signature can be "corrected promptly." Fed. R. Civ. P. 11(a). The very sentence in that rule that allows a court to strike an unsigned pleading includes that reference to prompt correction of those documents. By acting on the "shall be stricken" language in Rule 11(a) and ignoring the rest of the sentence, the court below did not give the rule its plain-meaning reading, and did not hold true to the "just" objectives that the rules presumably are designed to further. Fed. R. Civ. P. 1.

The view that an appellant should be given an opportunity to fix an unsigned notice finds support not only in Rule 11(a) itself, in that rule's 1993 Advisory Committee Notes, and in decisions from Rule 11's early days, but also in the text of other parts of Rule 11, for the sanctions that are the heart and soul of that rule may be imposed by a court only after the party or attorney facing those sanctions is afforded "notice and a reasonable opportunity to respond." Fed. R. Civ. P. 11(c). Are we to believe that Rule 11 affords those procedural protections to a party or attorney who has raised dilatory or frivolous claims in a legal document, while that same rule contemplates imposition of the ultimate penalty – dismissal of a case – with no warning at all (and for a matter so trivial as the omission of a signature)? That cannot have been the intent of the rule's drafters – indeed we know it was not, in light of the Advisory Committee Notes – and it surely is not an approach supported by the text of the rule itself.

In the end, the dismissal ordered in this case simply was not compelled by Rule 11, for nothing in that rule suggests that the federal courts are to play "gotcha" when a lawyer or a *pro se* party files an unsigned notice of appeal. Though Becker did fail to comply with Rule 11's signature requirement, the court of appeals likewise failed to comply with its own duty under that rule to give Becker an

opportunity for correcting the omission. He deserves that opportunity still.

C. Only Rule 11 Imposes A Signature Requirement For Notices Of Appeal, And It Does So Only In Some Civil Cases.

Though Rule 11's signature requirement does apply to notices of appeal – because those notices are of course filed "with the district clerk," Fed. R. App. P. 3(a)(1), just as are all other documents to which Rule 11 applies – that rule applies only to civil cases. *See* Fed. R. Civ. P. 1 (noting that the civil rules apply only to "suits of a civil nature," and only in the "United States district courts"); *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992) ("the Rules, including Rule 11, apply to all district court civil proceedings"). While this is of course a civil case, and therefore we acknowledge that Rule 11 applied to any district-court filings by either party, the view of the court of appeals below that *all* notices of appeal must be signed is surely wrong.

Certainly neither Rule 11 nor any other rule compels the appellant to sign the notice of appeal in federal *criminal* cases. In those cases, the clerk of the district court "must immediately prepare and file a notice of appeal on behalf of the defendant" if he or she "so requests," Fed. R. Crim. P. 32(c)(5), and that rule makes no mention at all of a signature requirement for such a filing. In fact, the only signature requirement in the federal criminal rules appears in Fed. R. Crim. P. 7(c)(1), which directs the prosecutor to sign the indictment or bill of information in each criminal case.

Indeed, even many of the civil cases that come before the courts of appeals are not governed by Rule 11, for many of those civil cases come not from the district courts but from various federal agencies. Appeals in those cases are initiated by the filing of a "petition for review" as described in Fed. R.

App. P. 15(a), and neither that rule nor any other directs the appellant to sign the petition when seeking appellate review of an agency order.

And the federal appellate rules as a whole impose no signature requirement in either civil or criminal cases. To be sure, the appellate rules indicate that "[a] pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise." Fed. R. App. P. 3(c)(2). But that language – which, according to the Advisory Committee Notes accompanying Rule 3's 1993 amendments, was "intended to reduce the amount of satellite litigation spawned by" the Court's decision in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988) (holding that each appellant must be specified in the notice itself) – does not come close to directing all parties or lawyers to sign notices of appeal. In addition, Rule 3 does not even mention signatures in its list of those features that a notice of appeal "must" contain. *See* Fed. R. App. P. 3(c)(1) (directing the appellant to (a) specify all parties who intend to appeal, (b) designate the judgment being appealed, and (c) name the court to which the appeal is taken).

Other parts of Appellate Rule 3 also suggest that a party's failure to sign the notice of appeal should not result in the automatic dismissal of the case:

> An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

***

> An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

Fed. R. App. P. 3(a)(2) & (c)(4).

In the end then, only Rule 11 directs that district-court documents – including, presumably, notices of appeal – be signed, and that rule applies only to civil cases. Even apart from the appellate court's failure in this case to afford petitioner Becker the opportunity for correction that the text of Rule 11(a) contemplates, then, the approach of the court below – treating the lack of a signature on the notice of appeal as a "jurisdiction[al] . . . defect[]," J.A. 16 – seems odd indeed where that rule applies only to civil cases (and not even to all of *those*, given that much federal civil litigation originates not in the district courts but in administrative agencies).

Surely the better approach – one consistent with both the text of Rule 11 and Appellate Rule 3, as well as with the longstanding principle that court rules cannot extend or lessen the jurisdiction of the federal courts, see *Sibbach v. Wilson & Co.*, 312 U.S. 1, 10 (1941) – is to view the signature on a notice of appeal in civil cases not as a must-have element like those features of the notice listed in Fed. R. App. P. 3(c)(1), but rather as a helpful device for showing that the losing party in the district court does indeed wish to appeal, and as an affirmative representation to the court from the appellant that the notice "is not being presented for any improper purpose, such as . . . [a] needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). The district court and court of appeals are entitled by Rule 11 to demand such a signature in any civil case coming from the district court, but no court should automatically dismiss the case simply because the notice is unsigned.

Just as American courts have always accepted unsigned documents for filing in civil cases, and have – consistent first with custom and now with the text of Rule 11(a) itself – provided parties and lawyers an opportunity to add a signature when court rules have called for one, so the federal rules today contain no jurisdictional requirement that notices of appeal be signed. While notices of appeal in civil district-court cases apparently should indeed be signed, the court below surely erred when it said that a federal court "lacks jurisdiction over" an appeal when the notice of appeal is unsigned. J.A. 16. Nothing in that rule – or any other – indicates that a missing signature on a timely notice automatically divests an appellate court of jurisdiction when that notice contains all of the elements that Appellate Rule 3(c)(1) demands.

II. Federal Courts Can And Should Seek Clarification From The Appellant(s) When An Unsigned Notice Of Appeal Creates Confusion.

To be sure, several courts have had to resolve the confusion caused when parties whose names or signatures did not appear on the notice of appeal later claimed that they actually intended to appeal, and other courts have likewise addressed the similar confusion caused when the names of signers and non-signers alike were typed on a single notice of appeal. See, e.g., *Ruiz Rivera v. Riley*, 209 F.3d 24, 27 (1st Cir. 2000) (where notice of appeal was signed by only one of several *pro se* individuals, the notice was valid only as to the individual who had signed the notice); *Covington v. Allsbrook*, 636 F.2d 63, 64 (4th Cir. 1980) (reaching the same conclusion, and explaining that the "only means of determining which litigants are interested in pursuing an appeal is by requiring each *pro se* party to personally sign the notice of appeal"), *cert. denied*, 451 U.S. 914 (1981); *Mikeska v. Collins*, 928 F.2d 126 (5th Cir. 1991) (same result); *Scarrella v. Midwest Federal Sav. and Loan*, 536

F.2d 1207, 1209 (8th Cir. 1976) (where notice of appeal was signed by only one of several *pro se* individuals, the notice was valid only as to the individual who had signed the notice), *cert. denied*, 429 U.S. 885 (1976); *Elias v. Connett*, 908 F.2d 521, 522 n.1 (9th Cir. 1990) (in a case decided before the current Fed. R. App. P. 3(c)(2) took effect, a notice of appeal signed by a *pro se* party did not perfect an appeal for his *pro se* wife also).

The understandable concerns of appellate courts in cases like those can be remedied easily enough, though. If a district court or a circuit court of appeals cannot determine – because of missing signatures (as in this case) or because of a mismatch between typed names and signatures – which of one or more district-court losers actually intend to appeal when a timely notice of appeal is filed, surely the court's clerk can direct the purported appellant or appellants to show cause why the appeal should not be dismissed as to some or all of them, just as federal district courts can direct parties to show cause why sanctions should not be imposed for violations of Rule 11(b). Fed. R. Civ. P. 11(c)(1)(B). If the appellants then fail to correct the missing signatures or fail to otherwise resolve the court's – or the appellees' – concerns, then the court is free to act as the court of appeals did in this case.

That very approach is the one followed by this Court, where Supreme Court Rule 14.5 permits the Clerk to return to the petitioner for correction any timely-but-in-some-way-deficient petition for certiorari. As long as the petitioner then returns a corrected petition within 60 days, the petition is docketed and treated as timely.

Under Fed. R. App. P. 4(a)(5)(A), the district court may extend the time for filing a notice of appeal where a party "shows excusable neglect or good cause" supporting the need for additional time. While Fed. R. Civ. P. 11(a)'s

language giving federal courts the authority to seek prompt correction of unsigned documents should be enough for those courts to call for – and then wait for – those prompt corrections when needed, the time-extension language in Appellate Rule 4 further underscores a district court's authority to extend the filing window for notices of appeal that initially arrive without the necessary signatures. And of course the federal courts enjoy "[c]ertain implied powers" that are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (citations and quotations omitted). If a court needs clarification about an appellant's unsigned notice of appeal, surely it can demand exactly that.

No prejudice inures to the appellee while the district court or the court of appeals clarifies whether a non-signing appellant like Becker – or any other losing party in the district court – intends to appeal. Presumably, the appellee has prevailed in the trial court in most cases, and if – through carelessness or ignorance or for some other reason – the appellant or appellants slow down the appeal by omitting a signature on the notice of appeal, no harm falls on the appellee, who typically has no interest in fast-tracking appellate review of a district-court judgment in his favor.

As Becker no doubt would have done, any appellant who in good faith wants prompt review of an adverse trial-court judgment will respond promptly to a show-cause order from the district court or court of appeals seeking clarification of an unsigned notice of appeal. Surely federal courts have the inherent power to seek that kind of clarification to resolve any doubts about which parties are or are not seeking appellate review. That is just what should have happened here, assuming that the district court or the

court of appeals had any doubts about the genuineness of Becker's unsigned notice of appeal.

III. Petitioner Becker's Appeal Should Not Have Been Dismissed.

A. An Automatic-Dismissal Rule For Unsigned Notices Of Appeal Does Not Advance The Interests Underlying Rule 11.

The very text of Rule 11 shows that the signature requirement it prescribes is but a means to the end of encouraging litigants to file legal documents well grounded in both law and fact. And the "purpose of requiring [in Rule 11(a)] unrepresented parties to sign their pleadings . . . was to make certain that those named as parties in an action in which there was no lawyer actually had assented to the filing of the action on their behalf." *Gonzales v. Wyatt*, 157 F.3d 1016, 1021 (5th Cir. 1998) (quoting 5A Wright & Miller, Federal Practice and Procedure: Civil 2d § 1334 at 54-55). By treating the Rule's signature requirement as an end in itself, without regard to the reasons behind it, the court of appeals surely lost sight of the "good ground" rationale that Justice Story and later commentators and rule writers have viewed as the rightful basis for the requirement itself.

Certainly we acknowledge the concerns voiced by the court below in an earlier case: "An unsigned notice of appeal could be nothing more than opportunistic behavior by the purported appellant in order to gain more time to consider whether or not the party really wants to appeal." *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998). The same could be said of the many defective petitions for certiorari that arrive at this Court's doorstep every week, though, many of which the Clerk's office nonetheless dutifully returns to the petitioners with directions for correcting and resubmitting again within 60 days. In the end,

no court can divine the good or ill motives of those who file unsigned notices of appeal or other similarly-defective documents in our federal courts. But "the notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal," *Smith v. Barry*, 502 U.S. 244, 248 (1992), and as the 1993 Advisory Committee Notes to Rule 11 say, that rule "establishes an objective standard" for legal filings, not one that turns on the actual motives of the attorney or party. See also Advisory Committee Notes to Fed. R. App. P. 3(c) (1993) ("If a court determines it is objectively clear that a party intended to appeal, there are neither administrative concerns nor fairness concerns that should prevent the appeal from going forward.").

The Court explained ten years ago that "Rule 11 is aimed at curbing abuses of the judicial system," *Business Guides, Inc. v. Chromatic Communications Enter.*, 498 U.S. 533, 542 (1991) (citation and quotations omitted). See also *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) ("the central purpose of Rule 11 is to deter baseless filings in district court"). Yet the no-second-chances approach of the court of appeals in this case targets the abusive, the ignorant and the careless alike. If a signature is as important for curbing abuses as Rule 11 suggests, no less important is the rule writers' apparent view that only the abusive litigator will fail to "correct[] promptly" the lack of a signature once it is "called to the attention of the attorney or party." Fed. R. Civ. P. 11(a). Only if those quoted words are honored will the rule's signature requirement home in on the kinds of abuses that it should.

B. The Federal Rules Are Designed To Facilitate Decisions On The Merits Of Legal Claims, Not Set Traps For Unwary Litigants.

Any other reading of Rule 11 would run counter to the general spirit of the federal rules of civil and appellate procedure, which "reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and [which instead] accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (citation and quotations omitted). See also *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966) ("The basic purpose of the Federal Rules is to administer justice through fair trials, not through summary dismissals as necessary as they may be on occasion.").

The very first rule of civil procedure explains that the federal rules – including, obviously, Rule 11 – are supposed to be "construed and administered to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. Rule 11 surely is not included in the rules just to give federal courts an easy way out as soon as a careless lawyer or an ignorant party omits a signature on a key document. As the Court said 35 years ago, "[t]hese rules were designed in large part to get away from some of the old procedural booby traps which common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court." *Surowitz*, 383 U.S. at 373. As lower courts have said, "it would . . . be a harking back to the formalistic rigorism of an earlier and outmoded time . . . to hold that the extremely simple procedure required by the rules is itself a kind of Mumbo Jumbo, and that the failure to comply formalistically with them defeats substantial rights." *Alley v. Dodge Hotel*, 501 F.2d 880, 884 (D.C. Cir. 1974) (quoting *Crump v. Hill*, 104 F.2d 36, 38 (5th Cir. 1939)).

This Court's decisions point to the built-in flexibility of the federal rules when a party's intentions – particularly a *pro se* party's intentions – are clear. See *Smith*, 502 U.S. at 245 (holding that "a document intended to serve as an appellate brief may qualify as the notice of appeal required by Rule 3"); *id.* at 248-49 ("If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal."); *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269 (1991) (holding that a district court's non-final bench ruling was a "decision" from which a notice of appeal could be filed, even if the court had not yet entered final judgment); *Torres*, 487 U.S. at 316-17 (explaining that "if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires," but holding that the court of appeals did not have jurisdiction over one particular appellant's appeal where his name had been inadvertently omitted from the notice of appeal filed by his 15 co-appellants); *Foman*, 371 U.S. at 181 (holding that because the appellant's "intention . . . was manifest," and because the "defect in the second notice of appeal did not mislead or prejudice the respondent," the court of appeals had improperly dismissed an appeal where the notice of appeal failed to specify all of the orders that the appellant intended to challenge in the appeal); *Lemke v. United States*, 346 U.S. 325, 326 (1953) (per curiam) (where appellant mistakenly filed his notice of appeal after the district court had announced its judgment, but before that court had actually filed a final judgment entry, the notice of appeal "gave full notice . . . of the sentence and judgment which petitioner challenged," and the court of appeals had therefore erred when it dismissed the appeal as premature).

Just as "[p]roper briefing is not . . . a jurisdictional requirement under the Federal Rules of Appellate Procedure," *Smith*, 502 U.S. at 249 – even though Fed. R. App. P. 28 spells out detailed requirements for acceptable appellate briefs – so the signature requirement in Rule 11 is not a jurisdictional must-have on the notice of appeal. That rule, like all of the federal rules, is designed to facilitate the presentation of well-grounded legal arguments and factual claims so that parties can receive decisions from the courts on the merits of those claims. If the notice of appeal adequately apprises the other parties and the courts about the appellant's intent to appeal, it has served its purpose in pushing the case along the road toward a decision on the merits in the court of appeals. That is its function, and the idea that the omission of a signature on the notice opens a surprise trap door beneath the appellant – suddenly and irretrievably bringing his case to a screeching halt – seems entirely at odds with the wording of Rule 11 and with the federal rules generally.

C. Petitioner Becker Is Entitled To A Decision On The Merits Of His Appellate Claims, Even If Those Claims In The End Have No Merit.

In this case, we certainly viewed the unsigned notice of appeal as adequate notice of petitioner Becker's intent to appeal, and, at least for several months, the court of appeals apparently felt the same, directing Becker to file his appellate brief and accepting it from him when he did so. Had the court below harbored any doubts about Becker's intentions or his identity, it could have sought the very corrections that Fed. R. Civ. P. 11(a) contemplates. And certainly we respondents could have objected to the lack of a signature on the notice of appeal as well. We did not do so, and fully expected the court of appeals to address Becker's appellate arguments on the merits. Certainly nothing about the

absence of a signature was prejudicial to our interests, and that is no less true now than when Becker filed the unsigned notice in 1999.

Even if we had any doubts about Becker's intentions, "any doubts as to . . . [his] intent to appeal . . . are resolved by . . . [his] opening brief[]." *New York Life Ins. Co. v. Deshotel*, 142 F.3d 873, 884 (5th Cir. 1998) (holding that a "mistake in designating orders to be appealed does not bar review if the intent to appeal a particular judgment can be fairly inferred and if the appellee is not prejudiced or misled by the mistake"). The court of appeals in this case docketed Becker's appeal on October 1, 1999, and directed him to file a signed appellant's brief by November 24, 1999. Becker in fact filed such a brief – which he signed both on the cover and on the last page – on November 8, 1999, and no one could then doubt his intent to appeal, or question his willingness to comply with court rules and deadlines. And likewise, even earlier – on October 18, 1999 – Becker filed in the district court a signed request for pauper status during his pending appeal, again showing that his intentions were genuine and that the person who had signed the original complaint was now actively pursuing the appeal.

In dismissing Becker's case, the court of appeals reached the right result, in our view, for his claim alleging wrongdoing by various state officials is surely without merit, just as the district court found. But the court of appeals did the right thing for the wrong reason, because Becker was and is entitled to his day in court on his written appellate claims, and the court of appeals should have affirmed the district court's dismissal only after addressing the merits of Becker's appeal. Because Becker timely appealed the district court's dismissal of his case, and then briefed his claims on the merits in the court of appeals in the way and within the time limits set by that court for him – right down to the filing of a timely "[s]igned" appellate brief as the court of appeals

directed, J.A. 14 – he had every right to expect that the court of appeals would hear his case.

Petitioner Becker may well be a cantankerous litigant whose legal claims are worth little more than the paper on which they are typed, but he has done – and done on time – everything that any court below has directed him to do. We have no reason to think that he would not have corrected his unsigned notice of appeal promptly had the court of appeals given him an opportunity to do so (and he in fact did exactly that in his timely motion for reconsideration, once the court of appeals told him about the significance of the missing signature).

According to the text of Rule 11, Becker was entitled to correct his unsigned notice of appeal. The history of that rule and the purposes behind it, together with the tenor of the federal rules in general and the particular procedural history of this case, all point toward a single outcome here. Petitioner Becker is entitled to his day in court on his appellate claims.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed, and the case remanded for further proceedings there.

Respectfully submitted,

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APPENDIX

Rule 1 of the Federal Rules of Civil Procedure provides as follows:

Rule 1. Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 11 of the Federal Rules of Civil Procedure provides as follows:

Rule 11. Signing Of Pleadings, Motions, And Other Papers; Representations To Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the

person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim,

defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 3 of the Federal Rules of Appellate Procedure provides as follows:

Rule 3. Appeal as of Right – How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record – excluding the appellant's – or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries – and any later docket entries – to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

Rule 4 of the Federal Rules of Appellate Procedure provides as follows:

Rule 4. Appeal as of Right – When Taken

(a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) *Effect of a Motion on a Notice of Appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) – becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective – without amendment – to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(c), nor does the filing of a motion under 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(6) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

Supreme Court, U.S.
FILED
APR 9 2001
CLERK

No. 00-6374

IN THE
Supreme Court of the United States

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY, ATTORNEY GENERAL OF OHIO, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

After initial input from three sources—the State of Ohio, Mr. Becker and the court-appointed *amicus curiae*—four observations cannot be challenged: (1) Mr. Becker did just what Appellate Rule 3(c)(1)(A) required him to do in completing the notice of appeal—"specify the party or parties taking the appeal . . . ; designate the judgment, order or part thereof appealed from; and name the court to which the appeal is taken"; (2) neither the Federal Rules of Civil Procedure nor those of Appellate Procedure, nor for that matter any federal statute, expressly conditions jurisdiction in the federal courts of appeal on the existence of a pen-and-ink signature on the notice of appeal; (3) no published decision from any federal court (of which we are aware) has ever held to the contrary in the context of a case involving a single appellant; and (4) from the beginning of this dispute to the present, no one has questioned Mr. Becker's "intent to appeal," which is all that Appellate Rule 3(c)(4) required him to make "clear" before he could have his day in an appellate court.

In the face of these truths, the *amicus curiae* makes several textual and policy arguments, all of which bring more credit to the inventiveness of the *amicus* than they do to the merits of the claims themselves. The extensive chain of implications and inferences required to sustain the textual arguments cannot be squared with the straightforward words of the Rules themselves. And even the most unvarnished appeal to policy cannot justify terminating the cause of Mr. Becker, whose only offense here was acknowledging that he was "(Counsel for Appellant)" when he provided a typewritten rather than a pen-and-ink designation of his name on the notice of appeal. His case, we respectfully submit, should be heard.

1. ***Amicus* does not defend the reasoning of the Sixth Circuit.** Conspicuously missing from the brief of the *amicus* is any effort to defend the Sixth Circuit's jurisdictional rule on its own essential terms. In the court of appeals' view, "Fed. R. App. P. 4(a)(1), in conjunction with Fed. R. Civ. P. 11(a),

requires that a party sign the notice of appeal in order to confer jurisdiction on the courts of appeals." *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998); J.A. 16. Because App. Rule 4(a)(1) requires a notice of appeal to "be filed with the district clerk within 30 days" of the judgment and because Civil Rule 11 requires all "pleadings" and "other paper[s]" to "be signed by the party" or an attorney, the Sixth Circuit reasoned that failure to comply with the signature requirement within 30 days defeats appellate jurisdiction. *Id.*

The *amicus* correctly declines to defend this line of reasoning. By itself, App. Rule 4 does not contain any signature requirement, but merely re-states the 30-day rule provided by statute. *See* 28 U.S.C. 2107(a). And while Civil Rule 11 says that "[a]n unsigned paper shall be stricken," it permits that draconian remedy only if "omission of the signature" is not "corrected promptly after being called to the attention of the attorney or party." Since no one "called" the alleged "omission of the signature" to "the attention of" Mr Becker and since no one thus gave him an opportunity to correct the alleged defect, this explanation for dismissing the appeal is not a tenable one.

2. **Mr. Becker did not fail to "specify" that he was the appellant.** Also incorrect are the alternative theories that *amicus* proposes for affirming the judgment. He first turns to App. Rule 3(c)(1)(A), which provides that the notice of appeal must "specify the party or parties taking the appeal by naming each one in the caption or body of the notice." Invoking the mandate that a notice of appeal must "specify" the appellant, *amicus* argues that no such specification ever occurs in the absence of a pen-and-ink "signature." *See* Br. at 23-24 (signature requirement "was intended as an interpretation of the jurisdictional requirement that the notice of appeal must specify the party or parties appealing"). But to embrace this theory is to slight Rule 3(c)(4), which flatly bans any such basis for dismissing an appeal. "An appeal must not be dismissed,"

that rule says, "for failure to name a party whose intent to appeal is otherwise clear from the notice." At no time has the State of Ohio, or even *amicus*, expressed any doubt about Mr. Becker's "intent to appeal." *See* Ohio Br. at 3, 5, 22. The rules do not support a failure-to-specify claim here.

Nor does precedent. Far from amounting to the beacon of interpretation that *amicus* suggests it is (Br. 4), *Covington v. Allsbrook*, 636 F.2d 63 (4th Cir. 1980), *cert. denied*, 451 U.S. 914 (1981), merely illustrates when the specification requirement correctly applies and when a signature may assist in meeting it. The notice of appeal in that case, as in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), did not indicate who among three plaintiffs was appealing and who was not. It merely listed one name, followed by "*et al.*," and was signed (whether by pen and ink the opinion does not say) by the one fully-identified appellant. Under these circumstances, the Fourth Circuit concluded that the "term 'et al.' does not inform any other party or any court as to which of the plaintiffs desire to appeal in this case." 636 F.2d at 64. That of course was correct, and anticipated this Court's decision in *Torres* eight years later. What was not correct was the appellate court's later *dictum* that "[t]he only means of determining which litigants are interested in pursuing an appeal is by requiring each pro se party to personally sign the notice of appeal." *Id.* This conclusion is not true in the context of a notice of appeal that, unlike *Covington*, *does* specify each appellant in the body of the notice of appeal—no matter who signs the document, no matter how the individual signs it and indeed no matter whether anyone initially signs the document at all. And the *Covington* conclusion is even less true in the context of a single litigant like Mr. Becker, who not only identified himself as an appellant in the body of the notice but who also typed his name on the alleged signature line.

No doubt specification of the party or parties taking an appeal is a jurisdictional prerequisite. But the means of

satisfying this mandate are not as unremittingly narrow as *amicus* submits. As App. Rule 3(c)(4) explains, the touchstone of specification is "intent to appeal." While a handwritten signature offers a sufficient basis for satisfying this requirement, it is not a necessary one and it thus is not the only one. Also sufficient are an identification of the appellant(s) in the body of the notice of appeal *or* a typewritten signature or signatures at the bottom of it. Mr. Becker did both, and accordingly cannot fairly have his desire to appeal questioned at this late date.

3. The sample notice of appeal attached to the Appellate Rules does not create a jurisdictional signature requirement. Contrary to the *amicus*'s contention (Br. 5, 7-8), the sample notice of appeal included with the Federal Rules of Appellate Procedure does not alter this interpretation. That notice, it is true, contains an "(s)" mark on what appears to be the signature line to the notice of appeal. But that "(s)" is more red herring than Rosetta Stone. What after all does an "(s)" signify in this context? Why, for example, would it cover only pen-and-ink signatures as opposed to typewritten ones? And why would it make the signature one of a discrete number of appellate *jurisdictional* requirements, as opposed to one of many *procedural* requirements that may be corrected in the course of the appeal. Only a most subtle and ultimately mean-spirited scrivener would establish an unyielding pen-and-ink signature requirement in this indirect manner.

Nor do the Rules incorporate this form as part and parcel of the requirements of the Rules themselves; nor do they designate this form (to say nothing of the innocuous "(s)") as the exclusive means for establishing a litigant's "intent to appeal." And that presumably is why the courts of appeal have not placed any reliance on the sample notice. While *amicus* may be correct (Br. 5) that the sample notice of appeal attached to the Federal Rules of Appellate Procedure contains the "(s)" mark, *see* A-1 (attached to this brief), the Notice of

Appeal (Form 6CA-3) that the Sixth Circuit includes among its "Selected Forms for use in the United States Court of Appeals for the Sixth Circuit" does *not*. It does not contain an "(s)" and it does not contain any other indication that a signature is required. *See* A-2 (attached to this brief). It instead contains a line marked "(Counsel for Appellant)."

Notably, this is the very form that was used in this case. After Mr. Becker lost at the trial court, he promptly wrote the Sixth Circuit asking for a notice-of-appeal form and was sent a government-printed form corresponding to Form 6CA-3. *See* Appendix to Petition, Notice of Appeal, Ex. C (containing a "U.S. GPO" designation in the lower-right corner); J.A. 12. Wishing to leave no mistake as to who was representing him, Mr. Becker typed his own name on the line marked "(Counsel for Appellant)." In the end, any battle over the forms provided by the Federal Rules of Appellate Procedure versus those provided in the Sixth Circuit Rules ultimately bolsters Mr. Becker's theory. The differing "signature" lines confirm that handwritten signatures represent a sufficient, but not a necessary, condition for specifying an intent to appeal. *Compare* Reply Br. A-1 (Appellate Rules) with *id.* at A-2 (Sixth Circuit Rules). *See also id.* at A-3 & A-4 (including other Sixth Circuit notice-of-appeal forms); *id.* at A-5 (pre-1993 Appellate Rules notice-of-appeal form).

4. Appellate Rule 3(c)(2) does not impose a jurisdictional *signing* requirement on *pro se* appellants. *Amicus* next contends (Br. at 28) that the Rules themselves, as opposed to a sample form, impose a signature requirement and that they do so only with respect to *pro se* appellants. The source of this latent requirement, *amicus* contends, is App. Rule 3(c)(2), which provides that "[a] pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise." According to *amicus*, the drafters of the Appellate Rules imposed a jurisdictional

signature requirement on *pro se* appellants when they added the above language in 1993.

Far from suddenly creating a jurisdictional signature requirement, App. Rule 3(c)(2) merely provides that a *pro se* notice of appeal will be understood to include the spouse and minor children of the *pro se* appellant if they were parties below. That is presumably why the Rule says that an appeal will be "considered" filed on behalf of the signer and the signer's family members rather than saying it *must* be signed to be accepted. The clarification also was required because unnamed family members might otherwise not be treated as appellants in light of the jurisdictional intent-to-appeal requirement and because *pro se* litigants customarily do not represent other parties.

Any doubt about the non-jurisdictional nature of this provision is confirmed by the caveat at the end of App. Rule 3(c)(2). The rule concludes with the essential phrase "unless the appeal clearly indicates otherwise." In other words, *pro se* appellants may clearly reveal their family members' desire to appeal in other ways, just as they may show an intent to appeal in a variety of ways. *Amicus*'s reading of the provision simply does not account for this phrase. To the extent the Rule purports to create a signature requirement to establish an intent to appeal for *pro se* litigants, as *amicus* submits, the "unless" caveat allows that intent to be established through other means. Otherwise, the caveat would serve no purpose, an interpretation that the Court has previously rejected in other interpretive disputes regarding the jurisdiction of the appellate courts. *See Hohn v. United States*, 524 U.S. 236, 249 (1998).

Nor likewise does *amicus*'s reading account for the similar caveat contained in App. Rule 3(c)(4). To repeat, that provision says that an appeal "must not be dismissed . . . for failure to name a party whose intent to appeal is otherwise clear from the notice." There is nothing in App. Rule 3(c)(2) that directly or even subtly purports to alter that mandate. And

no one can fairly challenge Mr. Becker's satisfaction of that requirement here.

5. **An examination of the workings of the Advisory Committee confirms that Rule 3(c)(2) does not impose a jurisdictional signing requirement.** *Amicus*, however, insists that the meaning of App. R. 3(c)(2) can best be plumbed not from its language or from other language in the Appellate Rules but from a unique shard of Committee intent—an advocacy group's proposal that the Committee did not accept. Specifically, *amicus* relies on the fact that the relevant language of the 1993 amendments ("A notice of appeal filed *pro se* is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent.") differs from that proposed by the Public Citizen Litigation Group, which contained no reference to signatures. Br. 22-23. *Amicus* concludes that the Committee must have intended to add a jurisdictional, *pro se* signature requirement because "[i]t is hard to see any other reason for rewriting the original Public Citizen proposal." *Id.* at 24.

Yet many other explanations exist for this development. Most notably and most naturally, the Committee simply meant to create a presumption regarding whether *pro se* litigants meant to include family members as appellants. That is what the words say and that is what the Committee Notes suggest. *See* Fed. R. App. P. 3 advisory committee's note (1993 amendments). But even if the Rule were promulgated with the expectation that *pro se* litigants would "sign" their notices of appeal, it does not follow that the requirement is jurisdictional. Even the Seventh Circuit decisions on which *amicus* relies (Br. 24) and in which Committee member Judge Ripple participated, do not reach this conclusion. *See Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 831 (7th Cir. 1986) (while "other courts have dismissed the appeals of *pro se* appellants who failed to sign the notice of appeal, . . . we believe that the

better procedure is to allow [the *pro se* plaintiff] the opportunity to remedy the omission"), and *Robinson v. City of Chicago*, 868 F.2d 959, 963 n.2 (7th Cir. 1989) ("an unsigned notice of appeal, even if it does not meet the demands of Fed. R. Civ. P. 11, meets the jurisdictional requirements for appeal").

Neither does it seem likely that the Committee would have wished to impose an independent, *jurisdictional* signing requirement on *pro se* appellants alone. The general rule is that the allegations of a *pro se* pleading, "however inartfully pleaded," are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). And while "the liberal pleading standard of *Haines* applies only to a [*pro se*] plaintiff's factual allegations," *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989), the Court has never held that a *pro se* plaintiff should be held to a *higher* standard than parties represented by counsel. Against this backdrop, the Committee could certainly have been expected to make any such new jurisdictional requirement explicit. Yet, plainly, it did not.

6. **The Advisory Committee could not, and did not, ratify contrary decisions of the federal appellate courts.** Still more implausible is the claim (*Amicus* Br. 4) that the 1993 amendment "fully ratified the practice of the courts of appeals in treating *pro se* signatures as a jurisdictionally necessary element of the notice of appeal." There was in fact no such practice to ratify, let alone a uniform one. *Cf. Power Reactor Dev. Co. v. Int'l Union of Elec. Radio and Machine Workers, AFL-CIO*, 367 U.S. 396, 408-09 (1961).

For starters, no published case of which we are aware has ever held that signing the notice of appeal is jurisdictional in the context of a single appellant (as here). *See Price v. United States Navy*, 39 F.3d 1011, 1015 (9th Cir. 1994) (dismissal of *pro se* appeal not warranted because "[i]t is clear from the notice of appeal and other papers that she is the only appellant

in this case"); *McNeil v. Blackburn*, 802 F.2d 830, 832 (5th Cir. 1986) (accepting timely, but unsigned, notice of appeal); *Lewis v. Lenc Smith Mfg. Co.*, 784 F.2d 829, 831 (7th Cir. 1986) ("better procedure is to allow [the party] an opportunity to remedy the [signature] omission"); *Robinson v. City of Chicago*, 868 F.2d 959, 962 n.2 (7th Cir. 1989) (refusing to treat the lack of a signature on a notice of appeal as a jurisdictional defect); *Thiem v. Hertz Corp.*, 732 F.2d 1559, 1562 (11th Cir. 1984) (notice of appeal with typed names of counsel and appellant was sufficient to give jurisdiction over appeal even though notice was not signed by counsel). The only practice to ratify here is one that sustains Mr. Becker's appeal.

Even as to multiple appellants, the practice was not uniform before 1993. While some cases dismissed multiple-party appeals where only one appellant (or no appellant) had signed the notice of appeal, *see, e.g., Covington v. Allsbrook*, 636 F.2d 63 (4th Cir. 1980), *cert. denied*, 451 U.S. 914 (1981); *Mikeska v. Collins*, 928 F.2d 126 (5th Cir. 1991), at least one case refused to dismiss the appeal where both appellants were listed in the body of the notice of appeal, *see James v. United States*, 970 F.2d 750 (10th Cir. 1992). Likewise, no pre-1993 case or any case since has dismissed an appeal when the appellant signed the appeal with a typewriter rather than in pen and ink. Here, too, there was no uniform practice to ratify, at least not one that supports *amicus*'s interpretation. The ratification claim cannot be sustained.

7. **To the extent they wish to do so, courts of appeal may remedy typewritten signatures on notices of appeal.** *Amicus* next weaves together (Br. 15-18) an elaborate argument regarding the inability of courts of appeal and district courts to correct "unsigned" notices of appeal. The gist of the contention appears to be that Civil Rule 11 imposes a jurisdictional signing requirement on notices of appeal and simultaneously precludes courts of appeal (and district courts)

from exercising the power granted under the Rule to allow the "omission of the signature" to be "promptly corrected after being called to the attention of the attorney or the party." The theory, however, begs more questions than it answers.

First, the language of Rule 11 establishes that the authority to dismiss any pleading or case (whether an appeal or not) exists only with respect to unrepentant litigants—those who decline to correct a procedural defect called to their attention by the court. If it is somehow true that neither district courts nor appellate courts may allow litigants to correct unsigned notices of appeal, that only means any authority under Rule 11 to dismiss the appeal does not exist. The Sixth Circuit's decision cannot be upheld on this theory.

Second, the theory underestimates the power of the courts of appeal. So long as the notice of appeal satisfies the jurisdictional requirements provided by statute and by the Appellate Rules—(1) the 30-day requirement and (2) notice of intent to appeal as to each appellant—appellate courts (and the clerks of those courts) are always free to correct other procedural deficiencies. Here, for example, Mr. Becker's notice of appeal easily satisfied both requirements, and at that point if the court wished to have a pen-and-ink signature on the notice of appeal it was free to ask him to provide one after the fact. That after all is the role of App. Rule 2, which provides that a court of appeals may "suspend any provision of these rules" other than the jurisdictional filing deadlines, and "order proceedings as it directs." *See also Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (federal courts possess "implied powers" that are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases") (quotations omitted).

That also explains *Smith v. Barry*, 502 U.S. 244 (1992). There, the Court held that appellate courts may treat a merits brief as a notice of appeal and thus forgive a far-more-serious

defect in the notice of appeal than any defect in Mr. Becker's notice. Nothing in *Smith* indicates that this lower-court authority turns on whether the merits brief *qua* notice of appeal is "signed"; indeed, nothing in *Smith* says one way or the other where the brief *was* signed. *Smith* then proceeds to explain how non-jurisdictional irregularities in an appeal may be corrected after the fact. "Having accepted [the brief] as the notice of appeal required by Rule 3, an appellate court might require timely filing of a second document meeting its standards for a brief or, if the paper meets those standards, take such other action as it deems appropriate to ensure that the filing sequence contemplated by the Rules is not disturbed." 502 U.S. at 249. So too here. Having accepted Mr. Becker's notice as the notice of appeal required by Rule 3, the court of appeals may require a second signed notice or may simply waive the requirement in accordance with the discretion vested in it by Rule 2. The contention that courts of appeal somehow lack authority to make such orders is simply mistaken.

This Court in fact frequently accepts defective filings so long as the defect is not jurisdictional. In those cases, although the Court asks the non-complying party to remedy its defective filing, it does not dismiss the pleading, or the case itself, in its entirety. *See* Ohio Br. at 16. That also is the procedure the Sixth Circuit customarily follows. In one of Mr. Becker's other cases, the Sixth Circuit's clerk sent a letter to Ms. Dawn M. Tarka, of the Office of the Ohio Attorney General, informing her that the State's briefs "do[] not comply with the relevant Federal Rules of Appellate Procedure or the Sixth Circuit Rules" because, among other reasons, they were not signed. The letter proceeds to request Ms. Tarka to correct the defect by sending the court signed copies of the briefs. *See* A-6 (attached to this brief); Appendix to Petition, Notice of Appeal, Ex. B. The same procedure should have been invoked here.

8. **A typewritten identification of one's name satisfies any signature requirement in the Appellate or Civil Rules.** In response to the argument that neither the Appellate nor Civil Rules require handwritten signatures, *amicus* is unable to offer anything more than equivocal evidence that relevant dictionaries (and other definitional sources) use the term "signature" only to apply to handwritten designations of one's name. Had the drafters of the relevant Rules meant to preclude typewritten signatures and had they meant to do so as a jurisdictional matter, surely they would have specified the requirement in the same clear way that they spelled out the 30-day rule.

Amicus is on even weaker ground in claiming that Mr. Becker's typewritten designation of his name failed to satisfy the *function* of a notice of appeal. As noted, the key function of a notice of appeal is to convey the appellant's "intent to appeal." A typewritten signature plainly satisfies that aim in the context of a single *pro se* appellant. *Amicus* further claims that a signature is needed to provide "objective evidence" of the party's intent to appeal, Br. at 33, and to provide "other important institutional indicators of authenticity," *id.* at 33-34. But this contention has no application to Mr. Becker. His notice included ample evidence of his intent to appeal, including indicators of authenticity other than his typed name. It included his name and address, the case name and caption, the respondent's name, and the name and judge of the court below. And because there was only one party who could have appealed, there was no confusion as to the identity of that party.

The risk of impostor appellants, at any rate, seems more contrived than real. It would seem to be the rare individual that would take responsibility for a loss in the district court, achieve appellant status, then suddenly disavow any intent to appeal. Nor has *amicus* cited even one lower-court case, let alone a deluge of cases, raising this curious problem.

In fact, the State of Ohio—which undeniably has an interest in ascertaining the identity of those taking an appeal—correctly points out that the concerns of courts of appeal in confirming a desire to appeal is amenable to a far simpler remedy. It may be resolved by the district or appellate court directing parties to show cause why the appeal should not be dismissed (1) as to non-signing parties who are listed in the body of the notice of appeal, or (2) as to parties who sign by means of a typewritten rather than a handwritten designation of their name. *See* Ohio Br. at 16. But if the threshold prerequisite of establishing an intent to appeal has been established within the correct time frame, as it plainly was in Mr. Becker's case, then the appeal may not be dismissed for lack of jurisdiction.

* * *

Rules are rules, it is assuredly true. And it is even more true in the context of limitations on the jurisdiction of the federal courts. But just as federal courts must resist assuming jurisdiction that they have not been given, *see Whitmore v. Arkansas*, 495 U.S. 149, 161 (1990) ("[i]t is not for this Court to employ untethered notions of what might be good public policy to expand our jurisdiction in an appealing case"), so they may not decline jurisdiction that Congress has asked them to exercise, *see Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) ("We have often acknowledged that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress."). When it came to this notice of appeal, Mr. Becker did everything that Congress asked of him—and more. That he was a *pro se* litigant, that the *amicus* seems to think little of his claim, *see Amicus* Br. at 13-14 & Lodging Vol. II, and that the State of Ohio thinks even less, *see* Ohio Br. at 23-24, are all matters to take up with the National Legislature. They do not supply a basis for denying Mr. Becker his day in court.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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April 2001 — Counsel for Petitioner

APPENDIX

APPENDIX

APPENDIX OF FORMS

FRAP FORM 1. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

United States District Court for the
_____ District of _____

File Number _____

A.B., Plaintiff	)	
v.	)	Notice of Appeal
C.D., Defendant	)	

Notice is hereby give that (here name all parties taking the appeal), (plaintiffs) (defendants) in the above named case,* hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the ___ day of _____, 19___.

(s)_____
Attorney for_____
Address:_____

*See Rule 3(c) for permissible ways of identifying appellants.
[Amended April 22, 1993, effective December 1, 1993.]

FORM 6CA-3. NOTICE OF APPEAL

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____

_____

Docket Number_____

_____

_____ (District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that _____ appeals to the United States Court of Appeals for the Sixth Circuit from the (__) Judgment (__) Order (__) Other (specify) _____ entered in this action on _____
(Date)

_____
(Counsel for Appellant)

Address _____
_____
_____
_____

Phone: _____

6CA-3
8/79

COPY 1-ORIGINAL
COPY 2-DUPLICATE

United States District Court for the_____
District of _____

_____
_____
_____
Plaintiff,

vs. CASE NO._____

_____
_____
_____
Defendant.

NOTICE OF APPEAL

Notice is hereby given that_____,
(here name all parties taking the appeal)
hereby appeal to the United States Court of Appeals for the Sixth Circuit from _____
(the final judgment) (from an order (describing it))
entered in this action on the _____ day of _____, _____.

(s)_____
Address:_____
_____
_____
Attorney for _____

cc: Opposing Counsel __
Court of Appeals __

6CA-3
1/99

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

_____
Plaintiff/Appellant

Case Number:

_____
Defendant(s)/Appellee

NOTICE OF APPEAL

NOTICE is hereby give that _____, plaintiff/defendant, in the above case, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the final judgment entered in this action on the _____ day of 19___.

_____
(Signature of Plaintiff/Defendant)

_____
(Address)

_____
(City/State)

_____
(Telephone No.)

APPENDIX OF FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

United States District Court for the _____
District of _____

File Number _____

A. B., Plaintiff

v. Notice of Appeal

C. D., Defendant

Notice is hereby given that C.D., defendant above named, hereby appeals to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from the order (describing it)) entered in this action on the _____ day of _____, 19___.

(s)_____

_____
(*Address*)
Attorney for C. D.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

VALERIE FIELDS FIELD
(513) 564-7024

Filed: July 18, 2000

Ms. Dawn M. Tarka
Office of the Attorney General
Corrections Litigation Section
140 E. Town Street
14th Floor
Columbus, OH 43215-6001

Re: 00-3631
Becker vs. Ghee
District Court No. 99-00966

Dear Counsel:

This is to advise you that on July 17, 2000 we received the briefs you submitted on behalf of your client. Upon review we we [sic] have determined that it does not comply with the relevant Federal Rules of Appellate Procedure or the Sixth Circuit Rules, in the following manner:

No Form of Appearance of Counsel was filed. The form is enclosed.
The briefs need attorney's signature on conclusion page.
Please do not call document "final" because the Court considers this a regular appellee brief.

Accordingly, we ask that you submit an original and six (6) copies of the signed conclusion page and appearance of counsel from to this office not later than 7/24/00. No

extensions will be granted. Upon receipt, the corrected copies will be substituted for the original filing, which will then be discarded.

Thank you for your cooperation with this request. Any inquiries you may have can be addressed to the undersigned.

Leonard Green, Clerk

(Ms.) Valerie Fields
Deputy

cc: Dale G. Becker

MAR 26 2001

No. 00-6374

Supreme Court, U.S.
FILED
MAR 26 2001
CLERK

IN THE

Supreme Court of the United States

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY,
ATTORNEY GENERAL OF OHIO, *et al.*

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF THE JUDGMENT BELOW AT THE INVITATION OF THE COURT

STEWART A. BAKER
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QUESTION PRESENTED

When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?

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OPINIONS BELOW

The unpublished order of the United States Court of Appeals for the Sixth Circuit, entered on May 12, 2000, is reprinted in the Joint Appendix ("J.A.") separately filed. J.A. 16-17. The court of appeals' unpublished order denying Petitioner's motion for reconsideration is reprinted at J.A. 18. The unreported order and judgment of the United States District Court for the Southern District of Ohio are reprinted at J.A. 4-11.

JURISDICTION

The court of appeals entered its judgment on May 12, 2000. A timely motion for reconsideration was denied on July 14, 2000. The petition for certiorari was filed on October 6, 2000. Certiorari was granted on January 8, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1994).

FEDERAL RULES INVOLVED

Rules 1(a) and 3(c) of the Federal Rules of Appellate Procedure appear in an appendix to this brief. Also in the appendix is Rule 11(a) of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

Petitioner is an Ohio prison inmate and a frequent *pro se* litigant. On August 27, 1999, Petitioner filed a federal civil rights action against Ohio prison officials for exposing him to secondhand smoke. The typewritten complaint was manually signed by Petitioner.

The same day that Petitioner filed his complaint, the district court *sua sponte* dismissed the action under the screening provisions of the Prison Litigation Reform Act, 28 U.S.C. § 1915A. The district court concluded that Petitioner failed to state a claim upon which relief may be granted and also failed to exhaust his administrative remedies. J.A. 4-11.

On September 20, 1999, Petitioner filed a timely notice of appeal. The notice of appeal was not signed by hand. Instead, Petitioner's name was typed in the space provided for the signing of the notice of appeal. J.A. 12.

On May 12, 2000, a Sixth Circuit panel dismissed the appeal *sua sponte* for lack of jurisdiction. The court of appeals found that the notice of appeal was "defective because it was not signed by the pro se appellant or by a qualified attorney," citing *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337-38 (6th Cir. 1998). J.A. 16-17.

Petitioner timely petitioned for certiorari. Respondents then notified the Court that they would not defend the Sixth Circuit's dismissal of the appeal for want of jurisdiction. They maintained that the Sixth Circuit should have dismissed the appeal for lack of substantive merit. This Court granted certiorari and invited Stewart Baker to brief and argue this case as *amicus curiae* in support of the judgment below.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

In the last quarter-century, federal courts have faced growing numbers of *pro se* cases, many of them brought by prison inmates like the Petitioner.[2] The tide of filings has forced federal courts at all levels to consider the differences

---

[1] This brief could not have been completed without the support of Steptoe & Johnson LLP and several of its attorneys, whose contributions are acknowledged with gratitude: Jason H. Ehrenberg, Jamie Underwood, Alice E. Loughran, Aaron M. Altschuler, and Jeffrey F. Pryce.

[2] *See, e.g.*, Robert G. Doumar, *Prisoner Cases: Feeding The Monster In the Judicial Closet*, 14 St. Louis U. Pub. L. Rev. 21, 21-25 (1994); Michael J. Mueller, *Abusive Pro Se Plaintiffs In The Federal Courts: Proposals For Judicial Control*, 18 U. Mich. J.L. Reform 93 (1984); *Comment, Pro Se Litigants: Application of a Single Objective Standard Under FRCP 11 To Reduce Frivolous Litigation*, 16 U. Puget Sound L. Rev. 1371 (Spring 1993) (*pro se* cases make up a significant portion of the dockets of federal district courts).

between *pro se* litigants and represented parties. Sometimes *pro se* litigation simply requires that courts muster extra patience—to determine, for example, whether a valid legal theory can be found to support an inarticulate *pro se* complaint. But at other times the special character of *pro se* litigation also calls for special precautions.

The signature requirement at issue here is a good example. The courts of appeals have grappled since at least the 1970s with the problem of how to determine whether every *pro se* party in a case truly wishes to pursue the appeal. Because each *pro se* party in the case could be bound by the judgment—and made liable for the costs of a frivolous appeal—courts began to demand that each *pro se* party sign the notice of appeal, and to dismiss the appeals of those who did not.

The source of the requirement was somewhat problematic. In the district courts, of course, Rule 11 of the Federal Rules of Civil Procedure required that *pro se* parties sign every filing. The Federal Rules of Appellate Procedure, in contrast, had no explicit signature requirement. So where did appellate courts find authority to enforce the signature requirement?

The answer, adopted in cases like *Covington v. Allsbrook*, 636 F.2d 63 (4th Cir. 1980), was to read the signature requirement into Rule 3(c) of the Federal Rules of Appellate Procedure. This rule requires that the notice of appeal must "specify the party or parties" seeking to appeal. *Covington* reasoned that the process of "specifying" *pro se* parties must include a demonstration of each party's individual intent and accountability, and that meant a signature: "The only means of determining which litigants are interested in pursuing an appeal is by requiring each pro se party to personally sign the notice of appeal." *Id.* at 64.

Whether that reading of Rule 3(c) was persuasive standing alone matters little, for it was soon strengthened mightily by two developments. First, in *Torres v. Oakland Scavenger*

Co., 487 U.S. 312, 314 & n.1 (1988), Justice Marshall wrote for the Court to clarify the specificity provision of Rule 3(c). It is a jurisdictional provision, he declared, and a party whose name is left off the notice of appeal, even due to simple clerical error, cannot cure the mistake once the time for filing the notice of appeal has expired. The reason, *Torres* held, was that courts and appellees must be able to determine "with certitude" which parties were appealing.

Then, in the wake of *Torres*, the Advisory Committee on the Federal Rules of Appellate Procedure began a focused initiative to revise Rule 3(c) and to spell out the meaning of "specify the party or parties" in particular contexts. One eager participant in the effort was Public Citizen Litigation Group, which suggested that the revisions should not only overturn *Torres* but should also create a special rule allowing a *pro se* party to appeal on behalf of a spouse and family members. The Public Citizen proposal did not impose a signature requirement on *pro se* parties. On the contrary, the proposal would have reversed—*sub silentio*—the *Covington* line of cases requiring signatures on the notice of appeal.

The Advisory Committee was persuaded to write a rule interpreting "specify the party or parties" in the context of *pro se* appeals. But it declined Public Citizen's invitation to overturn *Covington*. Instead, it revised the Public Citizen proposal by adding an explicit signature provision—providing that a *pro se* notice of appeal would be considered filed "on behalf of *the party signing the notice*" as well as the signer's spouse and minor children. Fed. R. App. P. 3(c) (1993) (emphasis added). The Advisory Committee further emphasized the jurisdictional nature of the signature requirement by inserting it into the rules immediately following the requirement that the notice "specify the party or parties" taking the appeal. In short, between them, *Torres* and the 1993 Advisory Committee fully ratified the practice of the courts of appeals in treating *pro se* signatures as a jurisdictionally necessary element of the notice of appeal.

There is no escaping this history, nor should there be. Petitioner finds significance in further revisions adopted in 1998, arguing that the signature provision is no longer on the list of items that "must" be included in the notice of appeal. But it is clear that the signature provision was moved to a separate paragraph in 1998 for reasons of organization and flow rather than substance, and the 1998 drafters emphasized that the change was "stylistic."

Similarly, it is entirely appropriate to apply the signature requirement to Petitioner. He is an experienced *pro se* litigator who has pursued nearly twenty separate cases in state and federal court. In all his previous federal appeals, he has always signed the notice of appeal by hand, and he signed by hand every filing in the district court in the present case—except the notice of appeal.

One can only assume that for this appeal, Petitioner simply failed to consult the federal courts' rules of procedure, which would have alerted him to the signature requirement—not once or twice, but in three separate places. Rule 11 of the Federal Rules of Civil Procedure requires that, for a *pro se* party, "[e]very . . . paper . . . shall be signed by the party." Fed. R. Civ. P. 11. In the appellate courts, both the Federal Rules of Appellate Procedure and their sample forms call for a signature. The extremely simple form suggested by the appellate rules includes a signature line and prints on it the usual symbol for a handwritten signature—"(s)." Finally, as we've seen, Rule 3(c) of the appellate rules has called for a signature since 1993.

Nor can Petitioner escape the requirement simply because its rationale is more forceful in multiparty appeals than in the case of a single appellant. While multiparty cases provide the principal rationale for requiring a signature, the rules themselves do not exempt single appellants. On the contrary, both the district and appellate rules on this point are relentlessly singular, speaking of "the party" and "the signer."

And in fact, the requirement has value even in single appellant cases, ensuring that appellants cannot escape responsibility for their filings and preventing third parties from injecting themselves into litigation. Nor does it cause serious prejudice to single-party appellants. Despite the posture of the present case, single appellants who fail to sign the notice of appeal are relatively rare. By far the most common application of the rule is in multiple appellant cases, probably because single appellants have already been required to sign every one of their district court filings before submitting a notice of appeal.

Finally, Petitioner argues that his typed name should be treated as a signature. Pet. Br. 4-5. This argument has been rejected by each of the appellate courts that have considered it. And with good reason. It would defeat the purpose behind the signature requirement, which was adopted in the first place because *pro se* parties were all too willing to type their coparties' names on notices of appeal. The federal rules require that *pro se* parties sign notices of appeal so that courts of appeal will have objective evidence, within the four corners of the document, that each party intends to join the appeal. Substituting a typed name for a handwritten signature would eliminate much or all of the signature's evidentiary value. Unlike the cases in point, which reject his reading, Petitioner can find support for his interpretation only in contexts where signatures serve very different functions.

ARGUMENT

I. The Federal Rules of Procedure Require *Pro Se* Parties to Sign the Notice of Appeal

The courts of appeals have been virtually unanimous in requiring that each *pro se* party sign the notice of appeal.[3]

[3] *See, e.g., Rivera v. Riley*, 209 F.3d 24, 27 (1st Cir. 2000); *Covington v. Allsbrook*, 636 F.2d 63, 64 (4th Cir. 1980), *cert. denied*, 451 U.S. 914 (1981); *Mikeska v. Collins*, 928 F.2d 126, 126 (5th Cir. 1991) (*per curiam*); *Mattingly*, 153 F.3d at 337-38; *Scarrella v. Midwest Fed. Sav. & Loan*, 536 F.2d 1207, 1209 (8th Cir.), *cert. denied*, 429 U.S. 885 (1976); *United States v. Johnson*, 43 F.3d 1308, 1310 n.1 (9th Cir. 1995).

The near-unanimity of the courts is grounded in the language of the federal rules of procedure, where not one or two but three separate provisions alert *pro se* parties to the importance of signing the notice of appeal.

A. A Signature Is Required by Rule 11 of the Federal Rules of Civil Procedure

An explicit signature requirement has always been part of Rule 11 of the Federal Rules of Civil Procedure:

> *Every* pleading, written motion, *and other paper* shall be signed by at least one attorney of record . . . or, *if the party is not represented by an attorney, shall be signed by the party*. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Fed. R. Civ. P. 11(a) (emphasis added).[4]

B. A Signature Is Required by the Federal Rules of Appellate Procedure

The Federal Rules of Appellate Procedure yield the same conclusion. In two places, they make clear that *pro se* parties are expected to sign the notice of appeal.

1. First, the signature requirement is impressed even on a *pro se* party who skips the rules and goes straight to the forms in the back of the book. The very first form in the Appendix to the Federal Rules of Appellate Procedure is a suggested notice of appeal. This is a remarkably simple document. It does not call for much, but it does call for a signature. It shows a line on which the party is to sign, and to eliminate

[4] Under Rule 11, a notice of appeal, like any other paper filed in district court, must be signed. *See., e.g., Scarrella*, 536 F.2d at 1209; *McKinney v. De Bord*, 507 F.2d 501, 503 (9th Cir. 1974).

any doubt, it includes the usual symbol for an actual handwritten signature—"(s)"—on that line to make clear that an actual signature is expected. It is nearly impossible to consult this form without coming to the conclusion that it should be signed before it is filed.

2. Not surprisingly, the rules accord with the form. As adopted in 1993, Rule 3(c) of the Federal Rules of Appellate Procedure tells appellants how a *pro se* notice of appeal should be filed: "*A notice of appeal filed pro se is filed on behalf of the party signing the notice* and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent." Fed. R. App. P. 3(c) (1993) (emphasis added).

This provision was modified in 1998, but the Advisory Committee emphasized that the changes were "stylistic only." Fed. R. App. P. 3, Advisory Committee's Notes (1998 Amendments). The 1998 revision, still in effect, states that "*[a] pro se notice of appeal is considered filed on behalf of the signer* and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise." Fed. R. App. P. 3(c) (emphasis added).

3. These rules are supported by policy. In the most common case, where there are multiple *pro se* parties, requiring each of them to sign the filings prevents a single litigant from making legal judgments for the other litigants, judgments that should be made only by a lawyer or by each *pro se* litigant for himself. By signing, they make it clear to the court and to the appellee that each of them does indeed intend to appeal and be bound by the result, something that would not be clear if one *pro se* litigant could simply add other parties to the document without their knowledge or consent.

Adding parties to a case without their express and incontrovertible consent can distort the litigation and harm those parties' interests. This is most plain at the time of filing

a complaint, when parties joining the case run the risk of *res judicata* and collateral estoppel based on the mistakes of a legally untrained layman.[5] But it can cause harm on appeal as well. One party's claims may become moot, making the status of the parties crucial to the court's jurisdiction [6]; or the appeal may be found frivolous and costs assessed against each appellant.[7] Even if costs are not imposed, the "three strikes" rule means that a *pro se* party who casually or unwittingly joins a series of frivolous *pro se* cases could later have difficulty pursuing other cases of more importance to him or her.[8] For these reasons, there must be no doubt about which parties have joined the appeal.

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[5] *Allen v. McCurry*, 449 U.S. 90, 103-04 (1980) (rules of collateral estoppel apply to § 1983 civil rights suits and encompass state-court judgments); *Klein v. Zavaras*, 80 F.3d 432, 434-45 (10th Cir. 1996) (*pro se* prisoner's due process and equal protection claims raised in civil rights action barred under issue preclusion principles); *see also* 28 U.S.C. § 2244 (1994 & Supp. IV 1998) (strictly limiting second or successive habeas petitions).

[6] *See, e.g., Van Hoose v. Eidson*, 450 F.2d 746 (6th Cir. 1971) (in challenge to high school hair code, the only proper appellant had graduated; court dismissed appeal as moot); *see also Oxendine v. Williams*, 509 F.2d 1405, 1406 (4th Cir. 1975) (refusing to approve *pro se* class action on behalf of "all inmates incarcerated at the Caswell County Unit" because certification would prevent other inmates from later raising the same claims).

[7] *See, e.g., Galvan v. Cameron Mut. Ins. Co.*, 831 F.2d 804, 805-06 (8th Cir. 1987) (*per curiam*) (court of appeals assesses double costs against indigent for filing and appealing frivolous civil rights claim); *Simmons v. Poppell*, 837 F.2d 1243, 1244 (5th Cir. 1988) (court of appeals awards costs against a *pro se* party who pursued appeal after a warning from the district court that his action was frivolous); *Lay v. Anderson*, 837 F.2d 231, 232-33 (5th Cir. 1988) (court awards costs to be paid "from his prison account or any other source of assets or income he may have"), *mandamus denied*, 493 U.S. 806 (1989).

[8] *See* 28 U.S.C. § 1915(g) (barring prisoners from filing a new action or appeal *in forma pauperis* if that prisoner filed three or more suits deemed frivolous, unless the prisoner is under imminent danger); *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir. 2001) (*en banc*).

4. In this case, of course, there is only one appellant. But that fact should not distort interpretation of the signature requirement as a whole, because in practice the requirement is invoked far more often when there are multiple appellants (probably for practical reasons that we discuss later).[9] Still, it is clear that the policies behind the signature requirement have less force in single-appellant cases, which raises the question whether single appellants can somehow be exempted from the signature requirement.

The rules themselves provide the answer. They are relentlessly singular: Rule 11 imposes its signature obligation

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[9] Among published appellate opinions addressing the signature requirement, less than twenty percent involved single appellants. Among unpublished opinions, our research suggests that single-appellant cases represent as little as ten percent of the cases decided.

Four published opinions involved single appellants: *Price v. U.S. Navy*, 39 F.3d 1011, 1014-15 (9th Cir. 1994); *McNeil v. Blackburn*, 802 F.2d 830, 832 (5th Cir. 1986); *Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 830 (7th Cir. 1986); *Thiem v. Hertz Corp.*, 732 F.2d 1559, 1562-63 (11th Cir. 1984).

Eighteen published opinions involved multiple appellants: *Rivera*, 209 F.3d at 27; *Talley-Bey v. Knebl*, 168 F.3d 884, 885 (6th Cir. 1999); *Mattingly*, 153 F.3d at 336-38; *Johnson*, 43 F.3d at 1310 n.1; *Kane v. United States*, 15 F.3d 87, 87 n.1 (8th Cir. 1994); *Carter v. Stalder*, 60 F.3d 238, 239 (5th Cir. 1995); *Aziz v. Moore*, 8 F.3d 13, 14 n.2 (8th Cir. 1993); *James v. United States*, 970 F.2d 750, 753 n.3 (10th Cir. 1992); *Mikeska*, 928 F.2d at 126; *United States v. Carter*, 906 F.2d 1375, 1376 (9th Cir. 1990); *Elias v. Connett*, 908 F.2d 521, 522 n.1 (9th Cir. 1990); *Massengill v. Comm'r*, 876 F.2d 616, 618 n.7 (8th Cir. 1989); *Smith v. White*, 857 F.2d 1042, 1043 (5th Cr. 1988); *Carter v. Comm'r*, 784 F.2d 1006, 1008 (9th Cir. 1986); *Covington*, 636 F.2d at 64; *Theriault v. Silber*, 579 F.2d 302, 302 n.1 (5th Cir. 1978); *Scarrella*, 536 F.2d at 1209; *McKinney*, 507 F.2d at 503.

A search of unpublished cases conducted on Westlaw's Court of Appeals ("CTA") database and covering the period 1991 to 2000 revealed seventy-eight cases dismissing appellants for failure to sign the notice of appeal; of those, eight involved single appellants.

on "the party" who is not represented by an attorney, while Rule 3(c) speaks of "the signer." These words simply cannot be read as applying only when the appellants are plural.

Nor is such a reading required by policy. Even when only one *pro se* party seeks to appeal, the signature requirement serves essential purposes. First, it is all too common for individuals to file frivolous appeals, perhaps to get the benefit of a temporary stay of deportation,[10] or to harass officials,[11] or for any number of other reasons.[12] Courts control these frivolous filings by imposing costs, but that is more difficult to do if the appellant can plausibly deny responsibility for the filing, something the signature requirement prevents. The signature requirement thus ensures greater accountability on the part even of single appellants. Second, surprisingly often, third parties with a variety of motives simply file litigation or

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[10] Filing a notice of appeal normally "provides aliens subject to deportation with procedural protection even stronger than that given to prisoners under sentence of death . . . ." *Dallo v. INS*, 765 F.2d 581, 589 n.9 (6th Cir. 1985); *see also De Leon v. INS*, 115 F.3d 643 (9th Cir. 1997) (providing for an automatic stay of removal pending the court's ruling on the stay motion).

[11] *Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 953 n.1 (4th Cir. 1995) (*en banc*) ("all too often" prisoner litigation is initiated "to harass prison officials"), *cert. denied*, 516 U.S. 1177 (1996).

[12] *See Cruz v. Beto*, 405 U.S. 319, 327 (1972) (Rehnquist, J., dissenting) (for inmates, the filing of a frivolous complaint may be a means of gaining "a short sabbatical in the nearest federal courthouse."); *see also Gabel v. Lynaugh*, 835 F.2d 124, 125 n.1 (5th Cir. 1988) (*per curiam*) ("pro se civil rights litigation has become a recreational activity for state prisoners"); *Fiore v. Thornburgh*, 658 F. Supp. 161, 165 (W.D. Pa.) (finding that the *pro se* party brought action "in order to harass defendants who had testified against him, prosecuted him or acted as judges in prior criminal proceedings"), *aff'd mem.*, 833 F.2d 304 (3d Cir. 1987); *Peth v. Breitzmann*, 611 F. Supp. 50, 56 (E.D. Wis. 1985) (finding that *pro se* party brought action "for the invidious purpose of 'getting back' at the I.R.S.").

appeals on behalf of a party who might not otherwise pursue legal remedies. Indeed, in many cases, these "next friends" attempt to file on behalf of a party who opposes further legal action.[13] Under these circumstances, the signature requirement provides incontrovertible evidence that the real party to the litigation wishes to advance his interests on appeal, thus satisfying the "case or controversy" requirement of Article III. All these considerations explain why none of the courts to consider the issue—and none of the relevant rules—exempt single-party appeals from the signature requirement.

5. Finally, there is no reason to believe that in practice the signature requirement has been difficult for *pro se* litigants to understand or obey. By definition, a party filing a notice of appeal has already made filings in the district court—and has been required to sign every one. That the last filing must be signed as well is not surprising, especially for parties who read the appellate rules and forms. Nor is it burdensome. This practical fact may explain why the requirement only occasionally affects single appellants.

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[13] *See, e.g., Gilmore v. Utah*, 429 U.S. 1012 (1976) (rejecting attempt by mother and "next friend" to challenge convicted murderer's death sentence); *Whitmore v. Arkansas*, 495 U.S. 149 (1990) (rejecting one death row inmate's effort to challenge death sentence of a second inmate); *Lewis*, 784 F.2d at 830 (rejecting notice of appeal signed not by plaintiff but by consultant specializing in "court-related grievances"); *Smith*, 857 F.2d at 1043 (layperson cannot represent others in filing a notice of appeal); *Carter v. Stalder*, 60 F.3d at 239 (notice of appeal signed by a nonlawyer on his own behalf and on behalf of another is effective only as to the signer).

Indeed, until the present appeal, Petitioner had shown a firm grasp of the requirement. He is a thoroughly experienced *pro se* litigant. In the space of eight years, he has filed and appealed, often through multiple levels of review, no fewer than nineteen state and federal lawsuits.[14] At least

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[14] Petitioner's litigation spans several categories. He has instituted at least four federal lawsuits asserting that a variety of state prison policies violated his civil rights. *See Becker v. Ghee*, No. C2-99-966 (S.D. Ohio Apr. 25, 2000), *aff'd*, No. 00-3631, 2000 WL 1827751 (6th Cir. Dec. 8, 2000); *Becker v. Montgomery*, No. 99-CV-825 (S.D. Ohio Aug. 27, 1999), *dismissed* No. 99-4190 (6th Cir. 2000), *cert. granted*, No. 00-6374; *Becker v. Wilkinson*, No. C2-00-505 (S.D. Ohio Sept. 25, 2000), *dismissed*, No. 00-4276 (6th Cir. Jan. 25, 2001); *Klopp v. McAninch*, No. 95-CV-424 (S.D. Ohio Oct. 30, 1995). Petitioner has also filed one state challenge asserting that his Eighth Amendment rights were violated because he was exposed to secondhand smoke. *See Becker v. McAninch*, No. 98CA2450, 1998 WL 903496 (Ohio Ct. App. Dec. 28, 1998), *jurisdiction declined*, No. 99-0258 (Ohio Apr. 28, 1999). In addition, Petitioner has filed at least nine collateral attacks to his underlying criminal conviction and sentence. *See Becker v. Mohr*, No. C-1-97-655, *consolidated with Becker v. Mohr*, No. C-98-142 (S.D. Ohio Oct. 14, 1998); *Becker v. Ghee*, No. 99-617 (Ohio May 26, 1999); *Becker v. Randle*, C-1-01-003 (S.D. Ohio Jan. 4, 2001); *State of Ohio v. Becker*, CA 97-03-028, 1997 WL 563274 (Ohio Ct. App. Sept. 8, 1997), *jurisdiction declined*, No. 97-2131 (Ohio Jan. 21, 1998); *State of Ohio v. Becker*, CA96-07-057, 1997 WL 50154 (Ohio Ct. App. Feb. 10, 1997), *leave to appeal denied mem.*, 679 N.E.2d 311 (Ohio 1997); *State of Ohio v. Becker*, CA2000-06-47, 2001 WL 15630 (Ohio Ct. App. Jan. 8, 2001); *In re Dale G. Becker*, No. 00-3368 (6th Cir. Aug. 8, 2000); *Becker v. McAninch*, No. 97-CV-665 (S.D. Ohio Oct. 14, 1998), *cert. of appealability denied*, No. 98-4347 (6th Cir. Mar. 19, 1999). Petitioner has also instituted three actions against his former wife and her divorce attorney making a variety of claims arising from the dissolution of the couple's marital assets. *See Becker v. Becker*, No. CA93-04-024, 1993 WL 358147 (Ohio Ct. App. Sept. 13, 1993), *dismissed*, No. 93-2356 (Ohio Mar. 30, 1994); *Becker v. Becker*, No. CA95-01-002, 1995 WL 308505 (Ohio Ct. App. May 22, 1995), *dismissed mem.*, 687 N.E.2d 296 (Ohio 1997); *Becker v. Becker*, No. CA97-01-001, 1997 WL 451381

five times, he has appealed from federal district court to the Sixth Circuit, and he signed by hand every one of his notices of appeal to the Sixth Circuit—except for the notice filed in this case. *See* Lodging Material, Vol. II at 70-76.[15] He also signed by hand every one of the filings that he made in the federal district court in this case—except for the notice of appeal. *See* Lodging Material, Vol. II at 91, 98, 104, 112, 123, 133, 140, 154, 164-65. In short, it appears that he simply ignored the rules in this case; in such circumstances, the Court has no obligation to strain the rules to salvage his appeal.[16]

II. The Signature Requirement Is Jurisdictional

In fact, neither Petitioner nor Respondent seriously argues that the notice of appeal need not be signed. No one disagrees that the court below was confronted with a notice of appeal that violated federal rules of procedure. The question in dispute is what, if anything, the court could do about the violation.

(Ohio Ct. App. Aug. 11, 1997), *jurisdiction declined mem.*, 687 N.E.2d 296 (Ohio 1997); *Becker v. Becker*, No. C-1-98-073 (S.D. Ohio Jan. 23, 1998) (dismissed as frivolous). Finally, Petitioner has filed at least two mandamus suits in state court. *See Becker v. Court of Claims of Ohio*, No. 99 APD 12 1408 (Ohio Ct. App.), *declining jurisdiction*, No. 00-2088 (Ohio Mar. 7, 2001); *Becker v. Dep't of Rehabilitation and Correction of Ohio*, No. 99 APD 08 939 (Ohio Ct. App. Mar. 16, 2000). For the Court's convenience, we have lodged public record materials evidencing Petitioner's prior litigation in the state and federal courts with the Clerk's office. *See* Lodging Material, Vol. II.

[15] In the other appeals, petitioner filed three signed notices of appeal and one signed petition for leave to file a successive petition in the district court, which the court of appeals construed as a notice of appeal. *See* Lodging Material, Vol. II at 70-76.

[16] *Cf. Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (and the cases cited therein) ("One who proceeds *pro se* with full knowledge and understanding of the risks involved acquires no greater rights than a litigant represented by a lawyer . . . . Rather, such a litigant acquiesces in and subjects himself to the established rules of practice and procedure.").

A. The Court of Appeals May Not Act Under Rule 11 of the Federal Rules of Civil Procedure

Both Petitioner and Respondent suggest that the court of appeals was limited to taking action under Rule 11 of the Federal Rules of Civil Procedure.[17] Rule 11 provides, "[a]n unsigned paper shall be stricken unless omission of the signature is promptly corrected after being called to the attention of the attorney or the party." Fed. R. Civ. P. 11. Petitioner and Respondent suggest that the court of appeals should have drawn the lack of a signature to Petitioner's attention under this rule and then waited for him to correct it; if he did not, the notice could have been struck.

Appealing as it may be, this scenario has no support in law. Rule 11 confers no authority on a court of appeals. The first sentence of the first Federal Rule of Civil Procedure makes that clear: "These rules govern the procedure *in the district courts* . . . ." Fed. R. Civ. P. 1 (emphasis added). Rule 11 is no different; this Court has specifically held that the rule contains no authority for appellate court action. "On its face," this Court declared, "Rule 11 does not apply to appellate proceedings." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 406 (1990). The courts of appeal, too, have disavowed any authority to impose sanctions under district court Rule 11.[18]

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[17] Pet. Br. 9, 16-17; Resp. Br. 11-15, 18-22.

[18] *See Partington v. Gedan*, 923 F.2d 686, 688 (9th Cir. 1991); *see also In re Nagy*, 89 F.3d 115, 116-17 (2d Cir.) (declaring that the Federal Rules of Civil Procedure apply only to district courts) (citing Fed. R. Civ. P. 1), *writ of habeas corpus denied*, 519 U.S. 1027 (1996); *Webster v. Sowders*, 846 F.2d 1032, 1040 (6th Cir. 1988) (Fed. R. Civ. P. 11 and all other federal rules of civil procedure govern the procedures in the district courts, not appellate courts) (citations omitted); *NLRB v. Interstate Material Corp.*, 930 F.2d 4, 6 (7th Cir. 1991) (the Federal Rules of Civil

The significance of these precedents for the present case is also plain: if Rule 11 does not give the courts of appeals authority to impose sanctions, it does not give them authority to strike unsigned notices of appeal, or even to threaten such action if the notice of appeal is not promptly corrected. Rule 11 cannot be used to enforce the signature requirement in the appellate courts.

Even if the courts of appeals had authority to dip at will into the district courts' rules and borrow their procedures, there are good reasons not to do so. The district court rules are written for a factfinder with a flexible docket. A district court can hold hearings and make findings as to whether an opposing party has been prejudiced by the lack of a signature. It can use that same factfinding capability to determine whether a correction has been made "promptly." And its procedures are built around hearings and status conferences and interim orders that are well suited to the somewhat open-ended remedy specified in Rule 11. None of these things is true of the courts of appeals, and it would be imprudent for appellate courts to try to administer such a scheme even if their rules allowed it, which of course they do not.[19]

Procedure do not apply to cases in the courts of appeals); *Covington*, 636 F.2d at 64 n.2.

[19] If further disincentive were needed, the procedural difficulty of applying Rule 11 in the appeals court is equally troubling. If the signature were not supplied promptly, would the appellate court strike the notice of appeal? Even assuming it had such authority over the district court's docket, what would then happen to the court's jurisdiction over the case—indeed, to its jurisdiction to issue the order striking the notice of appeal?

Nor can the district court do the job for the appeals courts. Once the notice of appeal has been filed, the case belongs to the court of appeals. *Griggs v. Providence Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). It would not be orderly—or perhaps even lawful—for the district court to strike from its docket the document

The appellate courts' lack of authority to act under Rule 11 does not mean that the rule is utterly irrelevant to appellate courts faced with an unsigned notice of appeal. By violating Rule 11, appellants also violate the Federal Rules of Appellate Procedure. This is because the requirements of Rule 11 are imported directly into the appellate rules, which command that any appellate documents filed in the district court, such as a notice of appeal, "must comply with the practice of the district court." Fed. R. App. P. 1(a)(2).[20] Thus, an unsigned notice of appeal violates Rule 1 of the

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that gives the appellate court jurisdiction over the matter. Even if it were, it would also raise a host of difficult procedural questions: What would be done if, as is typical, the notice of appeal is signed by one *pro se* party but not by others? Is this single piece of paper to be struck or not? Struck in part?

Perhaps the usual judicial order could be preserved if the court of appeals, upon finding an unsigned notice of appeal, were to return the case to the district court with instructions to apply Rule 11. But, Rule 11 on its face is not mandatory; the district courts are not required to strike unsigned notices—particularly in the absence of a contemporaneous objection. So, what error justifies returning the matter to the district court? Finally, if the *pro se* party does promptly correct and resubmit the notice of appeal, must the notice be accepted even years after the jurisdictional time limits of appellate Rule 4 have expired? If not, is the case somehow magically suspended in a jurisdiction-free zone while awaiting a signature from the *pro se* party? The number and the difficulty of these questions counsel against an effort to graft Rule 11 to the appellate courts' procedures.

[20] When adopting this provision in 1979, the Advisory Committee made clear that it covers the notice of appeal, which appellants must file in district court in accordance with appellate Rule 4(a):

> In some instances . . . the F.R.A.P. provides that a motion or application for relief may, or must, be made in the district court. *See* Rules 4(a), 10(b) and 24. The proposed amendment would make it clear that when this is so the motion or application is to be made in the form and manner prescribed by the F.R.C.P. . . .

Fed. R. App. P. 1, Advisory Committee Notes (1967 Amendments).

Federal Rules of Appellate Procedure. This violation must have a remedy, but the remedy should be found in the appellate rules, not those of the district courts.

B. The Signature Requirement Is a Jurisdictional Element of Rule 3(c) of the Federal Rules of Appellate Procedure

That is precisely where many courts of appeal have found the remedy. These courts have rejected *pro se* notices of appeal that are not signed—concluding that such notices do not properly "specify the party or parties taking the appeal" as required by Rule 3(c) of the Federal Rules of Appellate Procedure. Because the notice of appeal is the document on which appellate jurisdiction rests, these courts hold, a violation of Rule 3(c) means that the appeal must be dismissed.[21]

1. This is not a new reading of Rule 3(c). It does not even depend on the provision of Rule 3 that specifically deals with *pro se* parties signing the notice of appeal. The courts of appeals began to adopt this approach long before the *pro se* signature provision was added to the rules in 1993. Perhaps the most thoughtful of these early decisions was *Covington v. Allsbrook*, 636 F.2d 63 (4th Cir. 1980), *cert. denied*, 451 U.S. 914 (1981). There, the Fourth Circuit found a *pro se* signature requirement in the language requiring that each notice of appeal "shall specify the party or parties taking the appeal." Fed. R. App. P. 3(c) (1979). Although at the time there was no reference to signatures in appellate Rule 3(c), the *Covington* court nonetheless concluded that:

> The only means of determining which litigants are interested in pursuing an appeal is by requiring each *pro se* party to personally sign the notice of appeal.

[21] *See, e.g., Talley-Bey v. Knebl*, 168 F.3d at 885; *Carter*, 784 F.2d at 1008; *Mattingly*, 153 F.3d at 336-38; *Johnson*, 43 F.3d at 1310 n.1.

> Imposition of this requirement does not unduly burden the prospective appellant and acts to protect the rights and interests of all parties to the litigation. It is the only practical way to *specify* the party or parties taking the appeal, as required by Rule 3(c).

636 F.2d at 64 (emphasis in original). Holding that parties not specified in the notice of appeal were jurisdictionally barred from pursuing an appeal, the Fourth Circuit dismissed those parties that had not signed the notice.

The *Covington* analysis would be enough by itself to justify the dismissal of Petitioner's appeal. But Rule 3(c) has since been both interpreted and amended in a fashion that greatly reinforces that analysis.

2. Any doubts about the jurisdictional nature of Rule 3(c) were laid to rest by this Court in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), which determined that a failure to "specify the party or parties taking the appeal" was in fact a jurisdictional failure. In *Torres*, the petitioner was one of 16 plaintiffs in an employment discrimination case. The plaintiffs' loss in the district court was reversed by the court of appeals, but the petitioner's name had not been included in the notice of appeal. It was not his fault; the omission was a clerical error by his attorney's secretary. But the fact remained that his name was not in the order of the appellate court. The courts below declared the dismissal final as to petitioner by virtue of his failure to appeal. *Torres*, 487 U.S. at 313-14.

This Court affirmed. Writing for the Court, Justice Marshall addressed two provisions of the federal rules of procedure that the courts often use to cure litigation errors and avoid harsh results. First, the *Torres* Court recognized that Rule 3(c) excuses "informality of form or title." *Id.* at 314. But, the Court held, it is one thing to permit imperfect compliance with a technical requirement and quite another to waive the requirement altogether. The failure to name a party

in a notice of appeal is not some excusable "informality"; it constitutes a failure of that party to appeal. *Id.*

Torres also recognized that Rule 2 of the Federal Rules of Appellate Procedure gives courts of appeals broad power to suspend the requirements of the rules for "good cause shown," and that *Foman v. Davis*, 371 U.S. 178 (1962), had construed the appellate rules in a liberal fashion. Under *Foman*, a filing that is technically at variance with a procedural rule may nonetheless be accepted if it is the "functional equivalent" of what the rule requires. *Accord Smith v. Barry*, 502 U.S. 244 (1992).

But in applying these doctrines, *Torres* held, the courts are forbidden to "enlarge" the time limits for filing a notice of appeal. Those time limits are jurisdictional, *Torres* noted, and the limits would be vitiated if courts could later exercise jurisdiction over a party not named in the notice of appeal. While a Court may construe the Rules liberally, it may not waive these jurisdictional requirements even for "good cause shown":

> We recognize that construing Rule 3(c) as a jurisdictional prerequisite leads to a harsh result in this case, but we are convinced that the harshness of our construction is "imposed by the legislature and not by the judicial process." *Schiavone v. Fortune*, 477 U.S. 21, 31 (1986) (construing Federal Rule of Civil Procedure 15(c) in a similarly implacable fashion).

Torres, 487 U.S. at 318.

Finally, the *Torres* Court also rejected the argument that petitioner was covered by the use of "et al." in the notice of appeal. Permitting such a vague designation, Justice Marshall wrote, would not meet the specificity requirement of Rule 3(c) of the Federal Rules of Appellate Procedure. It would provide insufficient notice to the other parties, leaving the appellee and the court "unable to determine *with certitude*" whether a losing party should be bound by an adverse

judgment or held liable for costs or sanctions. *Torres*, 487 U.S. at 318 (emphasis added). Because the specificity requirement of Rule 3(c) was not met, the petitioner's appeal was jurisdictionally barred.

Torres thus affirmed the *Covington* court's general approach to the specificity requirement in Rule 3(c): the requirement is jurisdictional, and it means that appellees and the courts must be able to determine "with certitude" which parties are taking the appeal. But *Torres* did not directly address the signature requirement. That, it turned out, would become the job of the Advisory Committee on the Federal Rules of Appellate Procedure.

3. Following *Torres*, the lower courts continued to have difficulty adopting a uniform interpretation of the specificity requirement in Rule 3(c). In response, the Advisory Committee initiated a review of Rule 3(c). This review was to end in further support for the *Covington* view that *pro se* parties could only meet the specificity requirement by signing the notice of appeal.[22]

The Advisory Committee began by inviting public comment on clarifications to Rule 3(c). Among the handful of comments was one from Public Citizen Litigation Group, a public interest law firm. Public Citizen criticized the results of *Torres* and suggested extensive revisions to the rule.[23] Of

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[22] The Committee Note states in part that:

> The amendment is intended to reduce the amount of the satellite litigation spawned by the Supreme Court's decision in Torres. . . . In Torres, the Supreme Court held that the language of Rule 3(c) requiring a notice of appeal to "specify the party or parties taking appeal" is a jurisdictional requirement and that the naming of the first named party and adding "et al.," without any further specificity is insufficient to identify the appellants.

Fed. R. Civ. P. 3, Advisory Committee Notes (1993 Amendments).

[23] Indeed, among other things, Public Citizen urged the Advisory Committee to overturn *Torres*:

all the commenters, only Public Citizen suggested language dealing with *pro se* appeals, and its proposal ran directly counter to the approach in *Covington* and the other cases that required a signature as part of the specificity provision. Public Citizen's proposed language was unambiguous: "A notice of appeal filed pro se shall constitute an appeal on behalf of the party and any members of his or her immediate family who are parties, unless the notice of appeal clearly indicates to the contrary."[24] While Public Citizen did not acknowledge the cases like *Covington* that had found a signature requirement in Rule 3(c), its proposal would have overruled them *sub silentio*. If the Public Citizen language had been adopted, any "notice of appeal filed *pro se*" would "constitute an appeal on behalf of the party"—whether the notice was signed or not.[25]

In response to this comment, the Advisory Committee was persuaded to add a provision on how *pro se* parties should meet the specificity requirement, but it refused to accept Public Citizen's handling of the signature requirement. After receiving the public comments and the views of other Advisory Committee members, the committee chair, Judge Kenneth F. Ripple, prepared a revised draft of Rule 3(c). This draft incorporated much of the Public Citizen

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> Nor should the Committee feel bound to recommend a Rule requiring each and every individual name[d] in the text or caption of the notice, just because that is what the Court held in Torres. After all, the Torres majority made crystal clear that it was not making any pronouncement on what requirements were either fair or sensible; it was only construing the language of the Rule, and thus was not free to write on a clean slate.

Letter from Public Citizen Litigation Group to Joseph F. Spaniol, Jr., Secretary of the Committee on Rules of Practice and Procedure of May 4, 1992, at 4. *See* Lodging Material, Vol. I at 51.

[24] *Id.* at 5; Lodging Material, Vol. I at 52.

[25] *Id.*

language.[26] But in Judge Ripple's version, it was necessary for the *pro se* party to *sign* the notice of appeal: "A notice of appeal filed *pro se* is filed on behalf of the party signing the notice" and the signer's spouse and minor children. Fed. R. App. P. 3 (1993). This formulation was accepted by the Advisory Committee and ultimately adopted without change in 1993.

This history shows first that the signature requirement is directly descended from the requirement, emphasized in *Torres*, that the parties appealing the judgment must be specified in the notice of appeal. *Covington* and other cases had already adopted a reading of "specify" that required not just a naming of the parties, but also evidence in the form of a signature that the named parties in fact wished to pursue the appeal. The Advisory Committee, after an intense drafting effort focused entirely on the specificity requirement, adopted the *Covington* gloss on that requirement. It did so, moreover, with the full understanding, grounded in *Torres*, that the specificity requirement was jurisdictional. Put another way, the signature requirement added in 1993 was intended as an interpretation of the jurisdictional requirement that the notice

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[26] The Advisory Committee held deliberations during and after the comment period. After some debate within the committee, Judge Ripple circulated a May 21, 1992, memorandum proposing a revision of the language published for comment. Memorandum From Hon. Kenneth F. Ripple to Members of the Advisory Committee on the Federal Appellate Rules (May 21, 1992). *See* Lodging Material, Vol. I at 57-61. Exh. C. Judge Ripple's memorandum included the signature requirement. Final deliberations apparently took place in a May 26 conference call. Minutes of the May 26, 1992 Telephone Conference of the Advisory Committee On Appellate Rules. *See* Lodging Material, Vol. I at 65-69. Neither the Minutes nor the Memorandum discusses this change.

The materials described above have been lodged with the Clerk of the Court. *See* Lodging Material, Vol. I. We are indebted to John K. Rabiejand and Judith W. Krivit of the Rules Committee Support Office of the U.S. Courts for their assistance in researching the public records of the Advisory Committee.

of appeal must "specify the party or parties" appealing. That is plainly why the change was rather awkwardly stuck into the middle of Rule 3(c), immediately after the provision requiring that the notice specify the parties.[27]

This history further demonstrates that the Advisory Committee intended its new provision to add a signature requirement to appellate Rule 3(c). It is hard to see any other reason for rewriting the original Public Citizen proposal. It is reasonable to assume that the change was made with full awareness of *Covington* and similar decisions. The usual presumption that drafters understand the precedential background against which they draft has more than the usual force here.[28] The Advisory Committee had just spent months reviewing the case law related to the specificity provision in Rule 3(c), and Judge Ripple in particular had recently served on both of the Seventh Circuit panels that grappled with the *pro se* signature requirement. *See Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 831 (1986); *Robinson v. City of Chicago*, 868 F.2d 959, 962 n.2 (9th Cir. 1989), *cert. denied*, 493 U.S. 1035 (1990). With that as background, it is unlikely that the committee revised the Public Citizen language without intending to require a signature or to make that requirement jurisdictional.

4. One last chapter in this history disposes of a further argument put forward by Petitioner. He contends that his unsigned notice of appeal was the functional equivalent of a proper notice because it satisfied the requirements of Rule 3(c)(1), which says

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[27] The Appendix to this brief sets forth Rule 3(c) as it appeared before 1993, as well as after the 1993 and 1998 revisions.

[28] *See, e.g., Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute . . . .").

> (1) The notice of appeal must:
>
> (A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice . . . ;
>
> (B) designate the judgment, order, or part thereof being appealed; and
>
> (C) name the court to which the appeal is taken.

Fed. R. App. P. 3(c)(1). Petitioner's argument is premised on an unspoken assumption that the only "really jurisdictional" requirements of Rule 3(c) are these three items in subdivision 3(c)(1), and that the *pro se* signature provision in subdivision 3(c)(2) is just an optional bit of procedural clarification.

In fact, as detailed above, in 1993 the drafters carefully (if awkwardly) placed the *pro se* signature provision immediately between what are now subdivisions (1)(A) and (1)(B), showing their intent to make the signature provision a direct gloss on language that *Torres* had recently held to be jurisdictional. That decision made sense as a guide to the drafters' intent, but it was hardly a model of syntax and organization. For that reason, when a wholesale "style" edit of the rules was undertaken in 1998, the lengthy and convoluted provisions of Rule 3(c) were broken into numerous subdivisions and reorganized.[29] That led to the separation of the *pro se* signature requirement from the specificity requirement. There is, however, no basis for claiming that these changes were intended to have substantive effect. In fact, the 1998 drafters emphasized their purely stylistic objective and carefully omitted Rule 3(c) from the list of provisions that had undergone substantive changes:

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[29] *See* App. at 2a.

> The language and organization of the Rule are amended to make the Rule more easily understood. In addition to changes made to improve the understanding, the advisory committee has changed language to make style and terminology consistent throughout the Appellate Rules. These changes are generally intended to be stylistic only; in this Rule, however, substantive changes are made in subdivisions (a), (b), and (d).

Fed. R. App. P. 3, Advisory Committee's Notes (1998 Amendments).

Despite the 1998 editors' avowed intent to avoid substantive change, there is no doubt that their "stylistic" edits have proven to be a source more of confusion than clarity in the present case. Not only did the 1998 changes obscure the jurisdictional nature of the signature requirement as described above, but they also muddied the signature provision, at least a bit. In 1993, the expectation that each *pro se* appellant would sign the notice was communicated clearly ("A notice of appeal filed pro se is filed on behalf of the party signing the notice ..."); the 1998 stylistic revisions made this expectation a whisker less clear, though not fatally so ("A pro se notice of appeal is considered filed on behalf of the signer . . ."). Taken in context, however, none of the changes made in 1998 can be given substantive weight.

If the 1998 drafters had intended to remove the *pro se* signature requirement from the portion of Rule 3 that is jurisdictional, surely they would not have called the change "stylistic." In fact, the practice of those and earlier drafters was to treat all portions of appellate Rule 3 as jurisdictional except when a contrary intent was clearly expressed. For example, to make sure that the procedures required in Rule 3(d) were not interpreted as jurisdictional, an express provision to that effect was added to the rule: "The district clerk's failure to serve notice does not affect the validity of the appeal." Fed. R. App. P. 3(d). Similarly, earlier drafters

felt compelled to announce their intent "that the failure to prepay the statutory filing fee [required by Rule 3(e)] does not constitute a jurisdictional defect." *See id.*, Advisory Committee's Notes (1979 Amendments). No such disclaimer has ever been made about the signature provision of Rule 3(c)(2).

C. The Requirements of Rule 3(c) May Not Be Waived

Even if the signature requirement is jurisdictional, Petitioner and Respondent argue, the lack of a signature can be forgiven. They suggest that the courts are required or authorized to overlook the lack of a signature by Rule 3(c)(4) or by Rule 2. In fact, these provisions will not bear the weight Petitioner asks them to carry.

1. Appellate Rule 3(c)(4) provides that an appeal "must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4).

a. The first half of this savings clause is plainly inapplicable. An unsigned notice of appeal is not simply "informal"—it lacks a required element. Here, *Torres* is dispositive. In *Torres*, the Petitioner was mistakenly omitted from the notice of appeal but argued that this error should be excused as a mere "informality of form or title." *Torres*, 487 U.S. at 314. The *Torres* Court emphatically disagreed, declaring that "[t]he failure to name a party in a notice of appeal is more than excusable 'informality'; it constitutes a failure of that party to appeal." *Id.* If a required element is missing from the notice of appeal, Justice Marshall wrote for the Court, it may not be supplied later:

> Permitting courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the

> time for filing a notice of appeal. Because the Rules do not grant courts the latter power, we hold that the Rules likewise withhold the former.

Id. at 315. Precisely the same analysis applies to the signature requirement. It is required by the rule, and therefore its omission is not a mere informality.

b. The second half of subsection 3(c)(4) provides that an appeal should not be dismissed "for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4). This provision is doubly inapplicable. First, the failing that it aims to cure is not presented here. Petitioner's notice of appeal is not faulty because it "fails to name" Petitioner, but because he failed to sign it. Second, the provision applies only when the party's intent is "clear from the notice"—not from later filings or testimony or other external evidence. This phrasing does not authorize some formless appellate factfinding exercise to determine the party's intent. On the contrary, the Advisory Committee intended this language to apply only when it was "objectively clear that a party intended to appeal. . . ." *See* Fed. R. App. P. 3(c), Advisory Committee Notes (1993 Amendments). Far from undercutting the signature requirement, this provision explains its necessity. Without a *pro se* party's signature, there is no "objective evidence" within the corners of the notice of appeal that the party did indeed intend to appeal.

The simple filing of the notice cannot by itself be objective evidence of intent to appeal or the signature requirement would be a dead letter, since it is only relevant if a notice of appeal has been filed. Even in a case involving a single appellant, it would be risky to waive compliance with the signature rule.[30] This would be an anomalous reading of a

[30] In a multiple appellant case, treating an unsigned notice of appeal as evidence of intent to appeal just begs a new question: Whose intent? If two of the parties that failed to sign step forward and ask to get the benefits of the presumption of intent, there is no way for the court of appeals to choose between them, short of a hearing.

rule that imposes its obligations on "the signer" in the singular. Waiving the requirement would also open the door to third-party interlopers and to "deniable" notices of appeal that allow *pro se* appellants to disavow responsibility in the event that the court of appeals seeks to impose costs for a frivolous filing. *See* page 9 and note 6, *supra*.

2. Nor can the signature requirement be waived by reference to *Foman v. Davis*, 371 U.S. 178 (1962), or the provision of appellate Rule 2 that authorizes the courts of appeals to suspend the requirements of the appellate rules "for other good cause" shown. Fed. R. App. P. 2. Again, *Torres* is our guide. The *Torres* Court recognized that *Foman* and Rule 2 stand for the proposition "that the requirements of the rules of procedure should be liberally construed and that 'mere technicalities' should not stand in the way of consideration of a case on its merits." *Torres*, 487 U.S. at 316. But, *Torres* declared, those principles could be applied only when "the litigant's action is the functional equivalent of what the rule requires." *Id.* at 317. To be the functional equivalent of a notice of appeal, a document must contain all the elements required by Rule 3(c).

The *pro se* party's signature is required by Rule 3(c); indeed, it is part of the same "specificity" requirement that *Torres* identified as jurisdictional. A document that does not contain each *pro se* party's signature—somewhere—cannot be the functional equivalent of a proper notice of appeal.

Even less comfort for Petitioner is to be found in Rule 2, which allows appellate courts to suspend the rules or grant extensions liberally for good cause—except with respect to the deadline for filing a notice of appeal. As the history of Rule 3(c) shows, the signature requirement is intended to be

part of the jurisdictional requirement of specificity. And as *Torres* makes clear, parties may not cure noncompliance with Rule 3(c) after the time for filing an appeal has expired:

> More broadly, Rule 2 gives courts of appeals the power, for "good cause shown," to "suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion." Rule 26(b), however, contains certain exceptions to this grant of broad equitable discretion. The exception pertinent to this case forbids a court to "enlarge" the time limits for filing a notice of appeal, which are prescribed in Rule 4. We believe that the mandatory nature of the time limits contained in Rule 4 would be vitiated if courts of appeals were permitted to exercise jurisdiction over parties not named in the notice of appeal. Permitting courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the time for filing a notice of appeal. Because the Rules do not grant courts the latter power, we hold that the Rules likewise withhold the former.

Torres, 487 U.S. at 314-15.

III. An Appellant's Typed Name Does Not Satisfy The Signature Requirement

A. Treating a Typed Name as a Signature Would Defeat the Purpose of the Signature Requirement

Petitioner further argues that his typed name should be treated as a signature. Pet. Br. 4-5. This argument has been rejected by each of the appellate courts that considered it in the context of the Rule 11 signature requirement.[31] And for

[31] *See Giebelhaus v. Spindrift Yachts*, 938 F.2d 962, 965-66 & n.1 (9th Cir. 1991); *White v. Am. Airlines, Inc.*, 915 F.2d 1414, 1426-27 (10th Cir. 1990).

good reason. It is utterly inconsistent with the purpose of requiring each *pro se* party to sign the notice of appeal. A *pro se* party's signature on the notice provides objective evidence within the four corners of the document that the party intends to join the appeal. Substituting a typed name for a handwritten signature would eliminate the signature's evidentiary value. After all, the signature requirement grew out of a concern that *pro se* parties may be a bit too willing to type the names of their coparties on legal filings. Treating typed names as signatures will only encourage that practice.

Indeed, if Petitioner's definition of signature were adopted, the next issue would be predictable: What if there is no name at all on the signature line, but the purported appellants' names were typed somewhere else in the document—such as the caption or the list of parties? Has that notice been "signed" as well? This slope is not just slippery, it is glazed. If the commercial cases are accepted as a guide, they already treat even letterheads as signatures, showing little or no regard for where in the communication the "signature" is to be found.[32] What is more, appellate Rule 3(c)(4) expressly preserves notices whose only flaw is informality. If typewritten names are accepted as signatures, it would almost certainly be held a "formality" to insist that the names be typewritten in a particular place. In short, once a typed name is treated as a signature, the place where the typing occurs will soon become irrelevant, and at that point the signature requirement will have disappeared entirely, since every notice of appeal that successfully names the parties, either in the

[32] *See Carna v. Bessemer Cement Co.*, 558 F. Supp. 706, 708-09 (W.D. Pa. 1983) (pre-printed name of a company constitutes a signature on a bill of lading, citing U.C.C. § 1-201, official comment 39, which notes that a signature may be on any part of the document and in appropriate cases may be found in a letterhead); *see also* William E. Wyrough, Jr. & Ron Klein, *The Electronic Signature Act of 1996: Breaking Down Barriers to Widespread Electronic Commerce in Florida*, 24 Fla. St. L. Rev. 407, 419-20 (1997) (also citing U.C.C. § 1-201, official cmt. 39).

caption or elsewhere, will automatically be deemed to include the parties' signatures.

B. The Cases Cited by Petitioner are Inapt

Nothing in the cases mustered by Petitioner compels such an absurd result. On the contrary, Petitioner candidly acknowledges that some of the definitions he cites imply that a signature must be handwritten, while others do not. Pet. Br. 10. The reason for this divergence is simple: the courts' interpretation of how best to satisfy a signature requirement depends on the underlying purpose of the requirement.[33] The cases assembled by Petitioner are unpersuasive precisely because they address signature requirements from very different contexts and with very different purposes.

1. For example, contracts, bills of lading, and bank notes generally require signatures to show that the signing party assented to a commercial arrangement. In commercial cases, too, the trial court is free to examine other, external evidence that may make the signature simply one more piece of evidence of assent, and often a redundant one at that.[34] Not surprisingly, once assent has been proven, the courts are reluctant to demand the formality of a handwritten signature as well. But in the context of a notice of appeal, extrinsic evidence of intent is largely unavailable. The appeals court is no place for a hearing, or even for admitting potentially

[33] *See* Christopher B. Woods, *Comment, Commercial Law: Determining Repugnancy in an Electronic Age: Excluded Transactions Under Electronic Writing and Signature Legislation*, 52 Okla. L. Rev. 411, 425-26 (1999).

[34] *See, e.g., Orchard Group, Inc. v. Konica Med. Corp.*, 135 F.3d 421, 427 (6th Cir. 1998) (company representative's prior dealings with other party is evidence that the representative had apparent authority to bind his company to a contract); *Dawson v. Gen. Motors Corp.*, 977 F.2d 369, 372-73 (7th Cir. 1992) (allowing evidence of parties' course of dealing and external discussions for purpose of demonstrating ambiguity of parties' intent to be bound).

conflicting evidence of each party's intent. That is why the Advisory Committee in 1993 stressed that the notice of appeal itself must provide "objective evidence" of the party's intent to appeal—because the notice of appeal is the only evidence that the appeals court is able to receive.

Congress recently made plain its view that commercial definitions of "signature" cannot be applied willy-nilly to signatures on court filings. Last year, hoping to promote the growth of electronic commerce, Congress made electronic signatures the full legal equivalent of handwritten signatures in almost every context. *See* Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000) ("E-SIGN Act," codified at 15 U.S.C. §§ 7001 *et seq.*). To demonstrate its sense of urgency, Congress also preempted the laws of states that failed to promptly accept the equivalence of electronic and handwritten signatures in a manner consistent with E-SIGN. 15 U.S.C. § 7002(a). But even as it pressed the states to recognize unconventional signatures, Congress refused to do the same to the courts. Instead, it entirely excluded from the effects of its law any signature requirements relating to "official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings." 15 U.S.C. § 7003(b)(1).

2. Equally inapposite are the cases upholding alternate signing methods by various public functionaries. *See* Pet. Br. 12. As in a commercial setting, the signature on a court-issued document is not the only means by which parties relying on the document can authenticate the identity and intent of the signer. There are other important institutional indicators of authenticity that surround a court-issued document – the parties to whom an order has been issued or a decision rendered have been part of ongoing proceedings in the court; frequently, there will be subsequent proceedings that serve to confirm, at least implicitly, the authenticity of

the document; and, in the rare case in which an affected party truly has reason to question the authenticity of an order or a decision, he or she can make appropriate inquiries to a clerk of the issuing court with relative ease. Likewise, an indictment or a search warrant, which (unlike a court order or decision) may be a person's first contact with the issuing law enforcement body, nonetheless emanates from a public institution with an established set of rules and procedures.

The same simply cannot be said for a *pro se* filing that contains the typewritten names of other *pro se* parties. Indeed it is hard to imagine a situation less buttressed by institutional guarantees of authenticity. One person can easily and without much thought type another's name in a notice of appeal. Forgery of a typewritten signature is far more difficult to prove than forgery of a handwritten signature. That is why a handwritten signature is necessary. Unlike a typed name it provides its own "biometric" assurance against forgery.[35]

3. Finally, Petitioner invokes the local court rules of the Northern District of Ohio, which allow attorneys to electronically sign court documents. Pet. Br. 14. This argument fails to take into account the crucial distinction between attorneys and *pro se* parties. Even if the Southern District of Ohio, where this case arose, had the same rule—and it quite emphatically does not[36]—Petitioner could not

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[35] *See* Sanu K. Thomas, *Note, The Protection and Promotion of E-commerce: Should There Be a Regulatory Scheme for Digital Signatures?*, 22 Fordham Int'l L.J. 1002, 1017 (1999) (citing R.R. Jueneman & R.J. Robertson Jr., *Biometrics and Digital Signatures in Electronic Commerce*, 38 Jurimetrics J. 427, 427 (1998)) ("laws require [a] written signature [because] that written signature identifies [the] signer and that person's normal signature changes slowly and is very difficult to alter, erase, or forge without detection").

[36] The local rules of the Southern District of Ohio do not permit electronic signatures, and even trial attorneys are instructed on the difference between a signature and a "typed name":

use the electronic signature system, for a simple reason. He is not a member of that bar. He is not subject to the rules and responsibilities that apply to members of the bar, and he does not face the threat of bar discipline for misconduct. Because attorneys are subject to bar discipline, it may be entirely logical to allow them to sign documents by alternate methods that provide less authentication than handwritten signatures. The courts are not required to ignore this difference in deciding when to accept typewritten "signatures" on pleadings.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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> All pleadings and motions filed on behalf of a party represented by counsel shall be signed by one attorney in his or her individual names as the trial attorney. . . , followed by the designation "Trial Attorney" together with his or her typed name, ... When one attorney signs on behalf of another, the full signature of each must appear; signatures followed by initials are unacceptable because the Court must determine who has actually signed the document. (*E.g.*, "/s/ Joan Doe by /s/ Richard Roe per telephone authorization.").

S.D. Ohio Loc. Civ. R. 83.5(b). While Petitioner is not a trial attorney, it is hard to read this passage as authorizing anyone, whether *pro se* or member of the bar, to "sign" a filing by typing a name on the signature line.

APPENDIX

APPENDIX

Federal Rules of Appellate Procedure

Rule 1(a) of the Federal Rules of Appellate Procedure reads:

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

Rule 3(c) of the Federal Rules of Appellate Procedure, as adopted in 1998, reads:

(c) Contents of the Notice of Appeal

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

After the 1993 amendments and before the 1998 amendments, Rule 3(c) read as follows:

A notice of appeal must specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X." A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal also must designate the judgment, order, or party thereof appealed from, and must name the court to which the appeal is taken. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice. Form 1 in the Appendix of Forms is a suggested form for a notice of appeal.

Before the 1993 amendments, Rule 3(c) read as follows:

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

Federal Rules of Civil Procedure

Rule 11(a) of the Federal Rules of Civil Procedure reads:

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.